LIBERTY

A Medallion Entitled "Legislation" on the Ceiling of the President's Room in the United States Capitol

RELIGIOUS LIBERTY ASSOCIATION

We believe in God, in the Bible as the word of God, and in the separation of church and state as taught by Jesus Christ; namely, that the church and the state have been placed side by side, each to work in its respective sphere. (Matt. 22:21; John 18:36.)

We believe that the Ten Commandments are the law of God, and that they comprehend man's whole duty to God and man.

We believe that the religion of Jesus Christ is comprehended in the principle of love to God and love to our fellowman, and thus this religion needs no human power to support or enforce it. Love cannot be forced.

We believe in civil government as divinely ordained to protect men in the enjoyment of their natural rights, and to rule in civil things, and that in this realm it is entitled to the respectful and willing obedience of all.

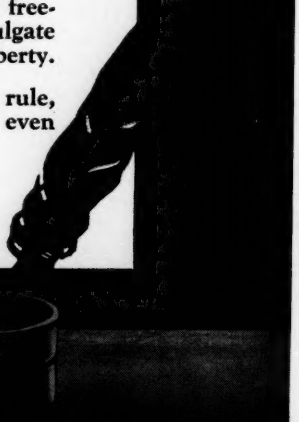
We believe it is the right and should be the privilege of every individual to worship or not to worship, or to change or not to change his religion, according to the dictates of his own conscience, but that in the exercise of this right he should respect the equal rights of others.

We believe that all legislation which unites church and state is subversive of human rights, potentially persecuting in character, and opposed to the best interests of the church and of the state; and therefore, that it is not within the province of human government to enact such legislation.

We believe it to be our duty to use every lawful and honorable means to prevent the enactment of legislation which tends to unite church and state, and to oppose every movement toward such union, that all may enjoy the inestimable blessings of religious liberty.

We believe in the individual's natural and inalienable right of freedom of conscience, and the right to profess, to practice, and to promulgate his religious beliefs; holding that these are the essence of religious liberty.

We believe that these liberties are embraced in the golden rule, which says, "Whatsoever ye would that men should do to you, do ye even so to them."



RELIGIOUS LIBERTY ASSOCIATION
6840 Eastern Avenue, Takoma Park, Washington 12, D.C.

In This Issue

Vol. 47, No. 4
Fourth Quarter
1952

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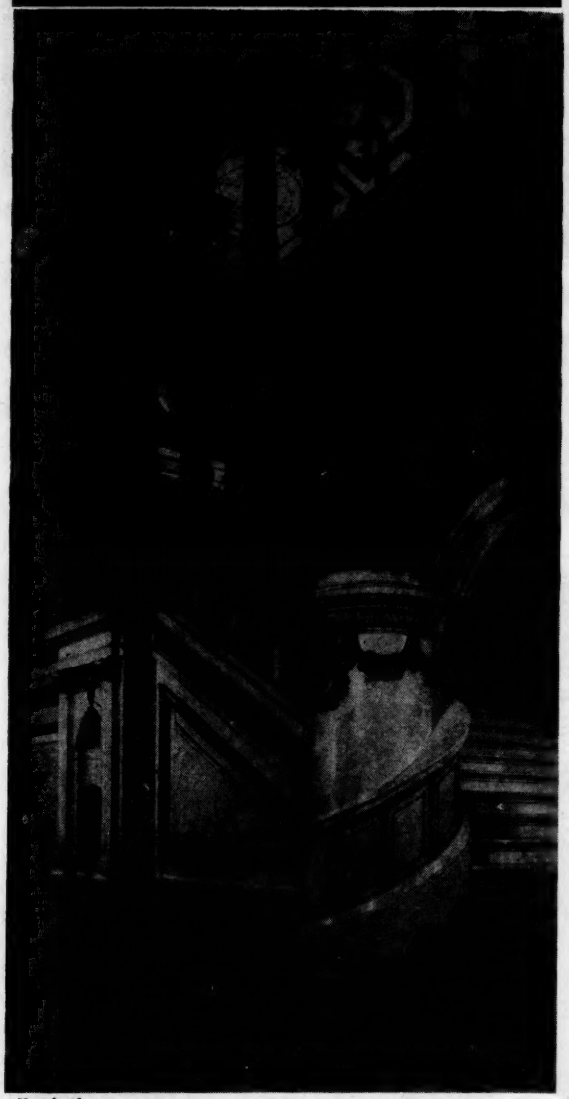

Horydczak

One of the grand stairways in the Library of Congress. The library was founded in the city of Washington in 1800. Its collections are now regarded as the largest in the world. It should rank near the top on the visitor's agenda.

FRONT COVER

A Medallion Entitled "Legislation" on the Ceiling of the President's Room in the United States Capitol

ARTICLES

EDITORIALS

NEWS and COMMENT

Our Cover Picture

Departing in a sense from the stately exteriors of historical buildings, this quarter we step inside the President's room in the Capitol, and view with admiration a medallion that adorns the ceiling, done in true fresco. This is just one of the many works of art painted by Constantino Brumidi that help to beautify our nation's Capitol.

Brumidi was born in Italy in 1805. He became an artist, and was admitted to the Academy of Arts in Rome at an early age. He advanced in his artistic ability to the point where he was asked to restore some of the paintings in the sacred palaces. This he did to the full satisfaction of Pope Gregory XVI.

Because of certain political considerations he was forced to flee his native land, never to return. He came to America, a refugee, in 1852, seeking freedom and an opportunity to use his artistic ability. It was with satisfaction that he pledged his allegiance to his new country and proudly signed one of his paintings in the Capitol, "C. Brumidi, Artist, Citizen of the U.S."

For twenty-five years he labored, endeavoring, as he once said, "to make beautiful the Capitol of the one country on earth in which there is liberty." He has been lovingly referred to by some as the "Michelangelo of the Capitol." Working until within a few days of his death in 1880, this skillful artist has left behind him a wealth of beauty in mural paintings and frescoed interiors. Although he died more than seventy years ago, many thousands who visit the imposing Capitol yearly still enjoy and marvel at the wonderful genius of this humble refugee who loved his adopted country.

BACK COVER

The Wall of Separation

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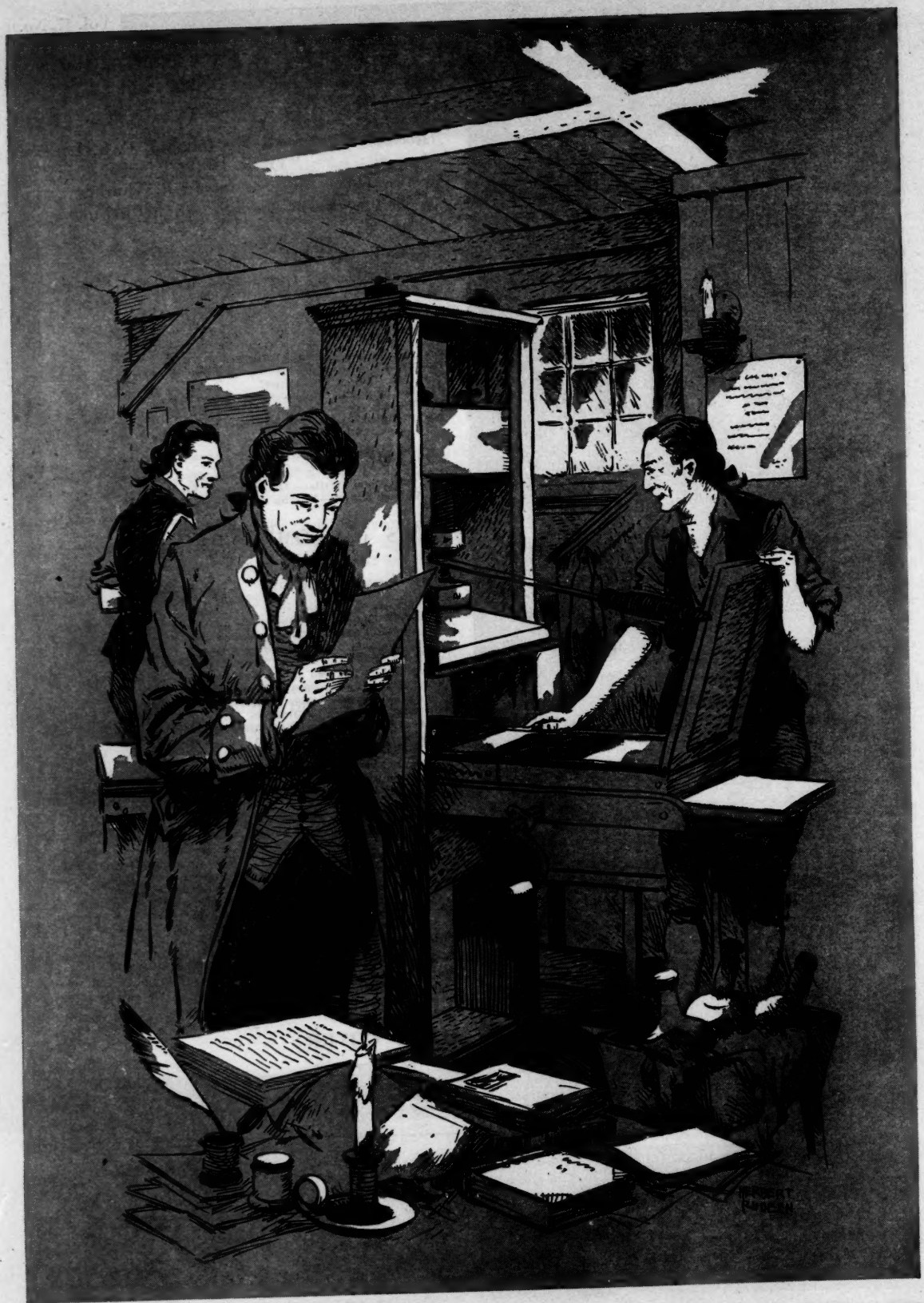
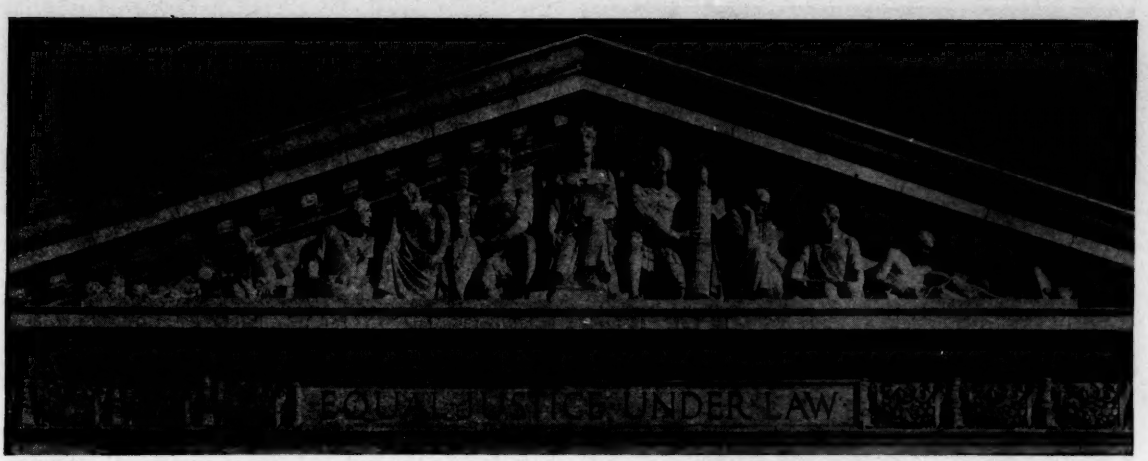




Horydczak

This striking pediment is over the front of the United States Supreme Court Building in Washington, D.C. In this highest court all are granted equal justice under the law.

The Significance of *The Miracle* Decision

By VASHTI McCOLLUM

FREEDOM OF THE PRESS was given a ringing reaffirmation and logical extension by the United States Supreme Court in its unanimous decision in the case of the censorship of the film *The Miracle*. For thirty-seven years American films have been hamstrung by censoring agencies catering to religious pressure groups mindful of the impact upon the minds of men made by this medium of "the press," and consequently determined to control the content of the films.

In their infancy the films were little more than peep shows and cheap entertainment, and gave little promise of the role they were to play in the communication of ideas. From England we had inherited the practice of licensing the theater—a vestige of the grim days of controlled speech and press. This form of control, ostensibly over the theater as a form of entertainment, has seriously limited the role of the theater as an instrument in the free exchange of ideas. Unfortunately, presentation of the motion pictures in the theaters more closely associated them with the ideas of entertainment and censorship than with the concept of freedom of expression. Many attempts were made to secure Federal censorship laws. These attempts failed, but state and city censor boards were set up with the stated objective of guarding the morals of the motion picture audiences. In upholding this practice, in 1915 the Supreme Court failed to perceive the inevitable role of the movies as an important media of mass communication of ideas.[1]

This early, unfortunate opinion engendered little criticism. Apparently not even the press, ever jealous of its own freedom, saw in the denial of freedom to the new medium the threat of possible press censorship, for there was very little protest.

With the introduction of the film sound track, educational and documentary films, and the newsreels, the full role of the motion pictures became more and more apparent, and it could no longer be argued that the films were sheer entertainment. The audience of the films came to rival in size that of the daily newspaper, and the censor was the only limiting factor over the otherwise almost limitless range open to the film's creators. Arbitrary censorship came to be viewed with increasing alarm by the press and by all freedom-loving people apprehensive of any extension of such control over the other media. Even the United States Supreme Court in ruling on an antitrust case involving the films, seized the opportunity to warn: "We have no doubt that moving pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the First Amendment." [2]

←

With the birth of printing there began anew the struggle for the privilege of expressing one's ideas by means of writing. First in Europe and then in the New World the contest continued. The battle was eventually won, at least in America, by our founding fathers in the early days of the republic. Today freedom of the press is guaranteed by the First Amendment to our matchless Constitution.

Drawing by Herbert Rudeen

[1] See Mutual Film Corp. *v.* Industrial Comm'n, 236 U.S. 230 (1915).

[2] United States *v.* Paramount Pictures, Inc., 334 U.S., 131, 166 (1948).

Horydczak Photo *C. Brumidi, Artist*

This frescoed portrait, in one of the corners of the President's room in the national Capitol, represents "Discovery." It shows Christopher Columbus planning his trip to the New World. To properly characterize his subjects, the artist studied well the stories of his adopted country.

Ruling for the first time squarely on "the question whether motion pictures are within the ambit of protection which the First Amendment, through the Fourteenth, secures to any form of 'speech' or 'the press,' " the Supreme Court in the 1952 case of *The Miracle* declared:

"It cannot be doubted that motion pictures are a significant medium for the communication of ideas. They may affect public attitudes and behavior in a variety of ways, ranging from direct espousal of a political or social doctrine to the subtle shaping of thought which characterizes all artistic expression. The importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform." [3]

Our guaranty of freedom of expression rests upon the philosophy of Milton, Mills, and Jefferson, that rather than restrict, it is safer and wiser to encourage full, free discussion in the open market place of ideas, and may the truth prevail. This does not permit absolute license. Abuse of freedom of expression is punishable under our laws against libel, obscenity, treason, et cetera. Every man bears the responsibility for his own words. But precensorship is not the American way. The Supreme Court, in reference to the New York statute under which *The Miracle* was banned said:

"The statute involved here does not seek to punish, as a past offense, speech or writing falling within the permissible scope of subsequent punishment. On the contrary, New York requires that permission to communicate ideas be obtained in advance from state officials who judge the content of the words and pictures sought to be communicated. This Court recognized many years ago that such a previous restraint is a form of infringement upon freedom of expression to be especially condemned." [4]

"Previous restraint" by the many State and city boards is not the only precensorship nor the least abhorrent of the indignities under which the films have had to be produced. There remains the Roman Catholic Legion of Decency, which has been alarmingly successful in enlisting the cooperation of censor boards, license commissioners, police, and other public officials in enforcing its boycotts of films it rates "condemned." There is also the film producers' own Production Code Administration.

In 1933 the Most Reverend Amleto G. Cicognani, in his capacity as delegate representative of the Pope to the Roman Catholic Church in the United States, summoned American Catholics "to a united and vigorous campaign for the purification of the screen." [5] The Catholic Legion of Decency was formed, and eleven million signatures on its pledge to boycott unacceptable films and uncooperative theaters terrified the film industry at a time when during the depression it was fighting for its very survival. The Motion Picture Association of America frantically confirmed Mr. Breen's appointment as official movie censor, and pledged to obey him and his interpretation of the Production Code. Father Lord, S.J., one of the most aggressive writers for Catholicism in the country, and Martin Quigley, a prominent Catholic layman and publisher of journals of the industry, had collaborated in writing this code.[6] In awarding Mr. Quigley an honorary degree, Loyola University referred to the Production Code as the Magna Charta of motion pictures.[7]

The Production Code Administration must review all scripts in advance, and no picture may be released by member companies without its seal of approval.[8] Mr. Breen advises producers on the purchase of books and plays for the films, on the casting of the pictures, and even on the selection of stars for the roles. All movie publicity, press books, advertising, and stills must also be approved by this office. Not only does the code treat of morals, but one of the provisions, in effect, places sacrilege among the prohibitions imposed upon the industry. Interpretation and application of

[3] Burstyn *v.* Wilson, No. 522, Oct. Term, 1951.
[4] *Ibid.*
[5] Avro Manhattan: *The Vatican in World Politics*, p. 374.
[6] "The Strange Case of 'The Miracle' " by Crowther, *Atlantic Monthly*, April, 1951; *New Republic*, Oct. 5, 1938.
[7] *New Republic*, No. 97, p. 65.
[8] Morris Ernst: *The Censor Marches On*, p. 86.

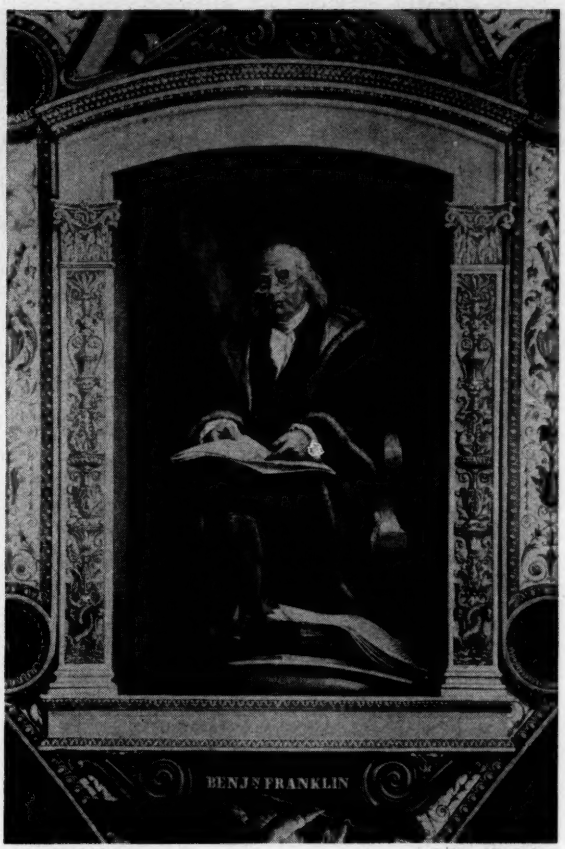
this code is left to the discretion of the censor, Mr. Breen, a Roman Catholic.

With the legion's threat of boycott hanging like a Damocles' sword over its head, the industry not only has scrupulously avoided offending the Catholic religion and hierarchy, but has, indeed, appeared to welcome every opportunity to incorporate portrayal of Catholic clergy, ritual, themes, and propaganda in its productions.[9]

In an encyclical issued in 1936, Pius XI advised American Catholics of their duty to supervise the films, and use the boycott against individuals and organizations that defied the tenets of the church. He urged the bishops to "remind the motion picture industry that all the demands they make regard not only Catholics, but all who patronize the cinema." And when the time was ripe, the bishops were urged to demand that the industry produce motion pictures which correspond entirely to "our" principles.[10] The Pope warmly praised the Legion of Decency, which has so intensified the Catholic pressure on the industry that today there is hardly an individual in the whole of the film business who, before planning a new picture, does not first reckon with the Catholic opinion.[11]

Section 305 of the Tariff Act of 1930 requires the collector of customs "to prohibit from importation, motion picture film that is treasonable, invites insurrection against the United States . . . or is considered obscene or immoral." But the code of the United States customs is not the Roman Catholic code. Unable to wield precensorship, which can usually be done quietly before the audience even knows of a film, let alone sees it, the foreign films cannot be censored by the legion until after they have been passed by the U.S. customs, and in many cases have already been seen by American audiences. Censorship applied at that late time often produces much opposition, as well as publicity embarrassing to the hierarchy. This could be avoided if the distributors of foreign films would submit them to the Production Code Administration for its seal of approval. Last November, the Bishop's Committee on Motion Pictures assailed the foreign film producers' announced intention to continue importations without using these facilities and the guidance they give.

It is not a little ironic that a foreign film, produced and exhibited freely in a predominantly Catholic country abroad, should have been the instrument for a test of strength between our own vaunted principles of freedom of religion and expression on the one hand, and the Roman Catholic principle of "one true church" and its Index on the other. After *The Miracle* had been passed by both the U.S. customs and the New York State Board of Censorship, it opened at the Paris Theater in Manhattan on December 12, 1950. Although members of the clergy of other faiths had approved the film, the Legion of Decency promptly condemned it as a "sacrilegious and blasphemous mockery of Christian religious truth." This launched a vehement campaign by powerful Catholic groups to demonstrate once again their power to dictate what should be the content of films exhibited in this country.[12] New York's license commissioner, Edward McCaffrey, former State commander of the Catholic war veterans, found the film to be "officially and personally blasphemous," and ordered the theater to stop its exhibition or have its license revoked. When Justice Aron Steuer ruled the commissioner had no such authority, Cardinal Spellman ordered a boycott of the theater by all devout Catholics. For once a theater management refused to capitulate, and the film showed to packed houses while the Catholic war veterans, and other Catholic organizations established a picket line around the theater. Several of the pickets



Horydczak Photo *C. Brumidi, Artist*

In another corner is a portrait of Benjamin Franklin representing "History." The artist said that his one ambition and prayer was that he might "live long enough to make beautiful the Capitol of the one country on earth in which there is liberty." The two other subjects not shown are Exploration and Religion.

[9] Ernst, *op. cit.*, pp. 89 and 91; *New Republic*, No. 88, p. 173; No. 97, p. 65; No. 84, p. 241; Manhattan, *op. cit.*, p. 375; Gilbert Seldes, *The Great Audience*, p. 96; Donald Slesinger, "The Film and Public Opinion" in *Print, Radio and Film in a Democracy*, p. 89; Rev. Bowie, "Protestant Concern over Catholicism," *American Mercury*, Sept. 1949.

[10] Manhattan, *op. cit.*, p. 372; *New Republic*, No. 97, p. 65.

[11] *Atlantic Monthly*, *op. cit.*

[12] *Atlantic Monthly*, *op. cit.*; New York *Times*, Dec. 24, 28, 31, 1950; Jan. 1, 15, 1951; Feb. 6, 1951; concurring opinion of Justice Frankfurter in Burstyn *v.* Wilson, *op. cit.*, and its footnotes.

Horydczak Photo *C. Brumidi, Artist*

Here is shown a section of the frescoed dome of the Capitol. This difficult piece of art work is considered the artist's masterpiece and was completed in eleven months. At the top of the picture is Washington seated between Liberty and Victory. Below is the figure of Freedom displacing Tyranny and Kingly Power.

carried placards and shouted: "This is the kind of picture the Communists want," and, "Don't be a Communist—all the Communists are inside." The theater management said that "there were ten times as many pickets as are permitted in labor disputes." On at least two occasions the police, because of telephone threats to bomb the theater, anonymously made, emptied out packed houses into the streets. The fire lieutenant, Edward Coughlan, served a summons on the theater management, charging it with fire law violations.

The result of this vigorous campaign, launched by the Legion of Decency, was frankly stated by Rev. James M. Gillis, C.S.P., in the Catholic *Tablet* of November 17, 1951: "As a result of what was largely if not entirely a Catholic protest, the Board of Regents withdrew the license they themselves had granted." Both the Appellate Division [13] and the New York Court of Appeals [14] upheld the board's right to ban a film under the New York Statute's prohibition of "sacrilegious" matter. But, in his opinion of May 26, 1952, Justice Clark for a unanimous U.S. Supreme Court refused to recognize "sacrilegious," as embodied in the Statute, as "within the narrow exception to freedom of expression." [15]

The court stated: "In seeking to apply the broad and all-inclusive definition of 'sacrilegious' given by the New York Courts, the censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies. New York cannot vest such unlimited restraining control over motion pictures in a censor. Under such a standard the most careful and tolerant censor would find it virtually impossible to avoid favoring one religion over another, and he would be subject to an inevitable tendency to ban the expression of unpopular sentiments sacred to a religious minority. Application of the 'sacrilegious' test, in these or other respects, might raise substantial questions under the First Amendment's guaranty of separate church and state with freedom of worship for all. However, from the standpoint of freedom of speech and the press, it is enough

[13] 278 App. Div. 253, 104 N.Y.S., 2d740.
[14] 303 N.Y. 242, 101 N.E. 2d665.
[15] Burstyn *v.* Wilson, *op. cit.*

to point out that the state has no legitimate interest in protecting any or all religions from views distasteful to them which is sufficient to justify prior restraint upon the expression of those views. It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications, speeches or motion pictures."

Reactions to the decision were many and varied. In Ohio, film censorship under State statute, which was upheld in the 1915 decision, will again be challenged in the case of a newsreel shown in five Ohio theaters without the required "leader."[16] The attorney general of Maryland has already ruled that the State board's authority to restrict the showing of films is limited to determining whether they are obscene or indecent in the standard sense.[17] Dr. H. M. Flick, director of New York State's official censor group is quoted as saying that "since 40 per cent of the films they process are not submitted to the industry for Production Code approval, if the present statutes are inadequate it would seem that immediate steps should be taken to formulate legislation which would protect the public against unscrupulous exploitation." [18] It is hard to understand how he can confuse "unscrupulous exploitation" and "sacrilegious," and also how, according to his logic, the other media of mass communication, such as the daily newspaper, radio, and TV, can be permitted to express themselves without the seal of approval from some production code.

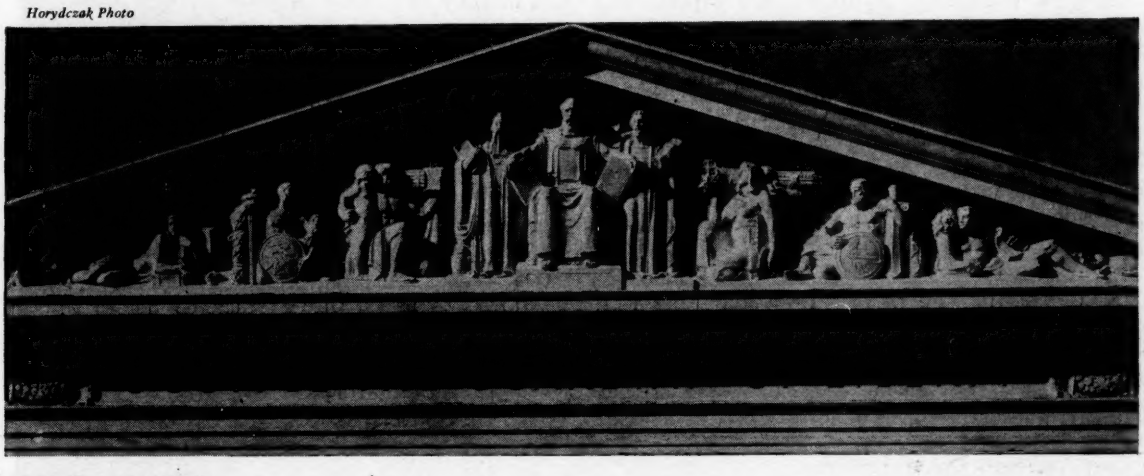
Eric Johnston, president of the Motion Picture Association of America, stated in part: "The decision allows us to hope that the court in a subsequent case will go all the way and make it unmistakable that the motion picture, like its sister medium of the press cannot, under the Constitution, be censored anywhere in our country." [19] This is particularly significant, since it would seem to include the Association's own Production Code Administration.

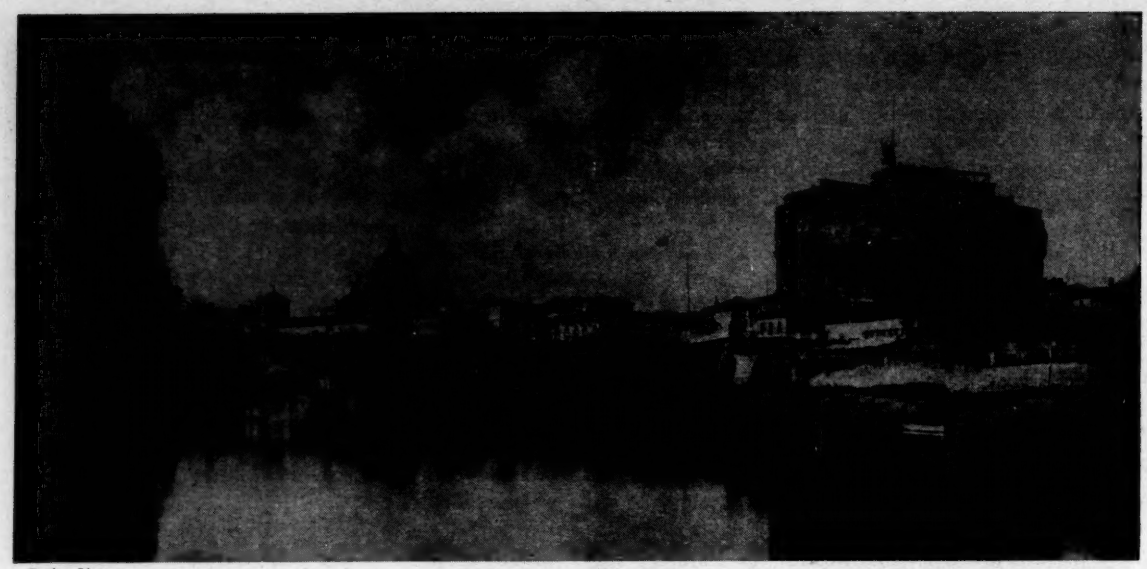
The Catholic press, under an Alexandria, Virginia, date line, reported that "delegates from twenty-two Holy Name Societies in northern Virginia voted unanimously here to picket the movie *The Miracle* if it is shown in this area. The delegates resolved to do 'everything possible' to prevent exhibition of the controversial film in the State." [20] As further evidence of the legion's continuing fight, the Chicago police department has attempted to censor the film in that city. Unfortunately, the decisions of the U.S. Supreme Court are not self-enforcing! But in the instance of the Chicago ban, the American Civil Liberties Union arranged a private screening of *The Miracle* in order that its members and guests might judge for themselves the wisdom of the censorship. Said the union: "The ever-increasing attempts of private pressure groups to censor or suppress motion pictures of which they disapprove—either through public officials or directly—is a serious threat to the freedom of expression." [21]

Although the implications of the decision are heartening, the battle is not yet won. Censorship of the films at the source still obtains, and pressure groups are demanding the same control over radio and TV. All the media, including the theater, should fight any attack on their right to freedom of the press. Public librarians should be strengthened in their resistance to the increased interference with their film and their book selections. *The Miracle* decision should put an end to all attempts by public officials, whether in the post office department, the U.S. customs, public libraries, or censorship boards, to protect from discussion or criticism religious organization and tenets. There is a fairly broad area of agreement as to what constitutes "obscenity," and this is punishable under the laws of the land. But there is no such unanimity of opinion regarding "sacrilegious," and the principle of separation of church and state guarantees against this constituting a crime.

[16] New York *Times*, July 15, 1952.
[17] *Ibid.*, June 15, 1952.
[18] *Ibid.*, May 27, 1952.
[19] *Ibid.*
[20] Rochester, New York, Catholic *Courier-Journal*, June 6, 1952.
[21] A.C.L.U. circular letter, enclosed as "exhibit A."

Horydczak Photo





Review Pictures

The famous Tiber River that flows through the city of Rome with its buildings of antiquity and places of historical interest. Here was the seat of an ancient empire that ruled the world two millenniums ago.

The Present Status of Religious Liberty in Italy

By ALVIN W. JOHNSON, Ph.D.

[*Dr. Johnson, general secretary of the International Religious Liberty Association, has just returned from several weeks' stay in Italy. His report is up to date, and will prove of interest to friends of religious liberty everywhere.*

[*It is anticipated that another article discussing the subject of religious liberty in Italy, written by a member of the Italian Parliament and a well-known practicing attorney in Rome, will appear in a future issue.*—EDITORS.]

PROTESTANT CHURCHES are experiencing new difficulties in Italy. It is interesting to note that some of the problems that Protestants have been experiencing in Spain, Colombia, and other countries are today facing them in Italy.

Recently a number of Protestant churches have been closed. Among these are Baptist, Seventh-day Adventist, Waldensian, and a large number of Pentecostal churches.

Despite efforts that have been put forth by the various denominations concerned, as well as by others interested in religious freedom, to secure the reopening of these churches, they still remain closed.

Technically these churches have been closed by the government on the basis that they do not have a permit authorizing their existence. Somewhat paradoxical is the fact that when a permit is requested for a Protestant church to be organized, such permission is refused by the government; hence it is impossible to comply with the law.

The Lateran Accord entered into by Mussolini and the Vatican in 1929, which resulted in establishing the state of Vatican City, virtually recognized the *status quo* so far as churches and religious communities in Italy were concerned. In laws adopted by the Italian Government subsequent to the Lateran Accord and implementing it, is the stipulation that a church must secure a permit from the government authorizing its existence.

This law is variously interpreted in different communities by different government officials as to its precise meaning. In some instances the statute is interpreted to mean that a permit must be secured before a local church building may be erected. In other instances it is interpreted by the local officials to mean that permits must be secured before a local congregation may meet for the purpose of worship, whether in a rented hall, in a chapel of its own, or even in a private home.

Requests for such permits are invariably denied. Reasons for such denial, if any are given, frequently

are that either the congregation is not of sufficient size, or, if a permit is sought for the construction of a chapel, it has failed to qualify.

Theoretically, only such churches or local congregations would be involved as have come into existence since the adoption of the Lateran Accord in 1929. Ironically enough a Baptist church that has been closed was established some fifty-three or fifty-four years ago, before the adoption of the Lateran Accord. The reason given the Baptist officials for closing the church was that on certain Sundays in the past no regular Sunday services were held. The government officials contended that this fact terminated the legal existence of the church. The further use of the church presumed the establishment of a new church and thus required a permit.

When the Baptists sought permission from the Minister of Cults to reopen the church the request was denied. The Baptists contended that the church had never been abandoned, that it had been continuously in use for more than half a century, and that during the time reported by the government officials it was being used for regular church activities.

During a visit to Rome the president of the Baptist World Alliance, the Reverend F. Townley Lord, discussed with the Italian Minister of the Interior, Signor Scelba, the granting to evangelicals in general and to Italian Baptists in particular, of that religious freedom to which they are entitled under the new Italian Constitution. In practice, freedom of religion involves freedom to provide proper accommodations for worship. The requirements in some localities by the authorities of special licenses for such organizations are naturally in violation of religious freedom. Where requests have been made for such licenses, long delays have resulted in final refusals.

Dr. Lord, who was accompanied by Dr. Manfredi Ronchi, executive secretary of the Italian Baptists Union, told Signor Scelba that it would be of "the greatest value to the fostering of good relations between the democratic countries, if Baptists of all lands could be assured by the Italian Minister of the Interior that his government is anxious to make religious freedom full and operative." Signor Scelba gave assurance that his government intended to make effective the religious freedom provided in the constitution.

The Baptists are in litigation in an effort to secure an order from the court authorizing the reopening of their church.

For some time the Waldenses have been in litigation over the closing of one of their churches. Though they secured a favorable decision from a lower court, authorizing the reopening of their meeting place, the state has appealed the decision, and it is now being considered by the appeal court.

From reports that have come to Waldensian officials, they feel that pressure is being brought to bear upon the appellate court, and the favorable decision of the lower court will be rescinded.

Seventh-day Adventists are contemplating legal procedures in connection with the closing of some of their churches.

The Italian Pentecostal churches have perhaps fared worse than any of the other Protestant bodies.

Review Pictures

The grand canal that winds through the city of Venice in Italy. The gondoliers that guide their craft up and down these placid canals are famous in song and story.

The historic signing in 1929 of the Lateran Accord between Mussolini representing the government of Italy and Cardinal Gasparri, representing the Vatican. This pact granted independence to the Vatican state and temporal power to the Pope.

International

Between fifteen and twenty of their churches are closed at the present time. The Pentecostal officials feel that they have "exhausted every means" of appeal to the government for recognition, but have failed to secure any action.

A number of Pentecostal ministers have been imprisoned. One pastor spent nine days in jail for preaching without a "permit." Police have forbidden evangelists of this denomination to enter certain communities.

In the recent World Conference of Pentecostal Churches they voted to appeal to the United Nations for help in securing religious freedom for their members in Italy.

Reports of acts of physical violence in holding evangelistic efforts have been mounting steadily in recent months. Steps are being taken by the various Protestant denominations to organize a Religious Liberty Association in the effort to combat more effectively the inroads that are being made upon all forms of religious liberty in Italy.

The feeling exists among many of the people in Italy that the closing of a number of Protestant churches is a weather vane of sorts which may serve as a guide for the future. If the closing of these churches proves successful, it is anticipated, other orders will follow closing additional churches in an effort to stamp out Protestantism in Italy. This may be a straw in the wind.

These efforts to deny religious liberty are being made in Italy despite the fine-sounding statements that appear in the newly framed constitution of the Italian Republic approved by the Constituent Assembly on December 22, 1947, and effective on the first of January, 1948.

Article II of this document states: "The Republic acknowledges and guarantees the inviolable rights of man both as an individual and in the social organizations where his personality is developed and requires the fulfillment of the essential duties of political, economic and social solidarity."

Article III provides: "All citizens have equal social rank and are equal before the law without distinction of sex, race, language, religion, political opinion, or social and personal conditions."

Article VII specifies: "The State and the Catholic Church are, each in its own sphere, independent and sovereign."

"The relations are regulated by the Lateran Pacts. Any amendments to the Pacts, if bilaterally agreed upon, do not require a process of constitutional revision."

Especially significant are articles VIII and XIX of the Italian Constitution.

Article VIII states: "All religious confessions are equally free under the law."

"Religious confessions other than Catholic have the right to organize themselves according to their own statutes in so far as they are not at variance with the Italian legal system."

"In accordance with the law, their relations with the State are regulated on the basis of agreements with their respective representatives."

Article XIX is as follows: "All persons have the right freely to profess their own religious faith, in any individual or collective form, to proselytize on its behalf, and to perform in private and in public acts of worship, provided the rites are not contrary to public morals."

Article XVII carries the further stipulation: "Citizens have the right to assemble peaceably and without arms."

Although the Italian Constitution gives the Catholic Church a priority status, certainly Articles VIII and XIX in particular grant to all churches in Italy religious liberty in the real sense of the word, so far at least as paper guarantees are concerned.

To a telegram from Protestant leaders addressed to Mr. De Gasperi, premier of the Italian Government, in an effort to secure an official pronouncement from the government relative to its stand on the constitution and its attitude toward religious freedom, Mr. De Gasperi made the following reply: "Referring to telegram 20/5 we give assurance Government faithful to constitutional principles of religious liberty."

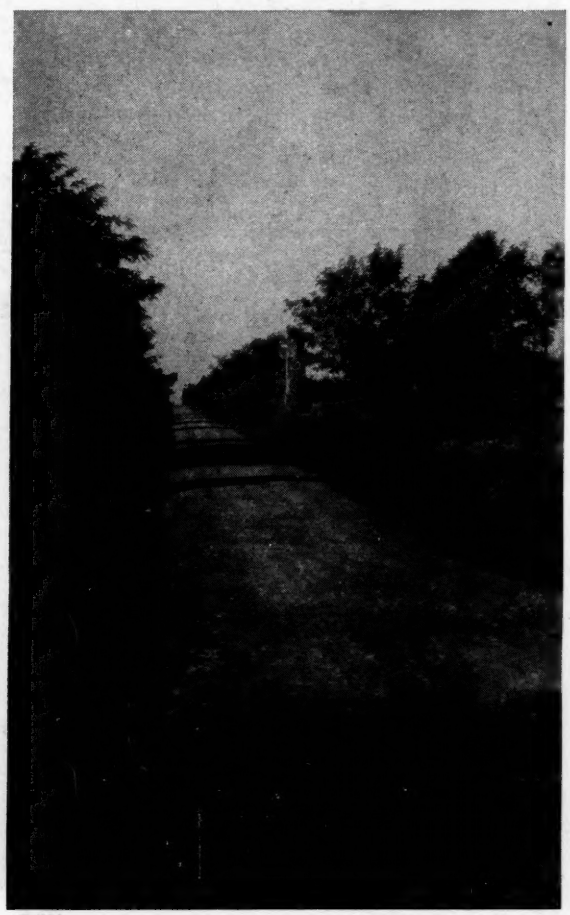
In the light of these constitutional guarantees and the commitments made by government officials, it is evident that the realities are quite different from the fine-sounding phrases that appear on paper. The practical aspects of this matter are recognized by Protestants in Italy today.

The Christian Democrat Party, which is the largest single political party in Italy, is frequently referred to as the Vatican party. The second largest political party in Italy is the Communist party. Since neither party has a majority, the government was formed through a coalition ministry consisting of the Christian Democrats, the Republicans, the Liberale party, and the conservative Socialist party. Since the last three named parties forming the ministry are comparatively small, the Christian Democrat, or Vatican party, constitutes the real power in Italy. As one of the leading members of the Senate commented to the writer: "During the Fascist regime we had *black shirts* down to here," pointing to his waistline; "now we have *black shirts* down to the floor."

Many of the people in Italy are thinking as did John Stuart Mill when he said: "It remains to be proved that society or any of its officers hold a commission from on high to avenge any supposed offense to Omnipotence, which is not also a wrong to our fellow-creatures. The notion that it is one man's duty that another should be religious, was the foundation of all the religious persecutions ever perpetrated, and if admitted, would fully justify them."

Businessmen, financial leaders, and some government officials deplore the effort in Italy to deny religious liberty. This element is obviously a minority group but is endeavoring to make itself heard. There is present still much of the spirit of Cavour and Garibaldi. Men of that spirit are not unmindful of the opposition. There are indications that they will not be content to continue under present restrictions.

The Appian Way, the highway to the Levant, was built in 313 B.C. It extends south from Rome and then east to the Adriatic Sea for 360 miles.



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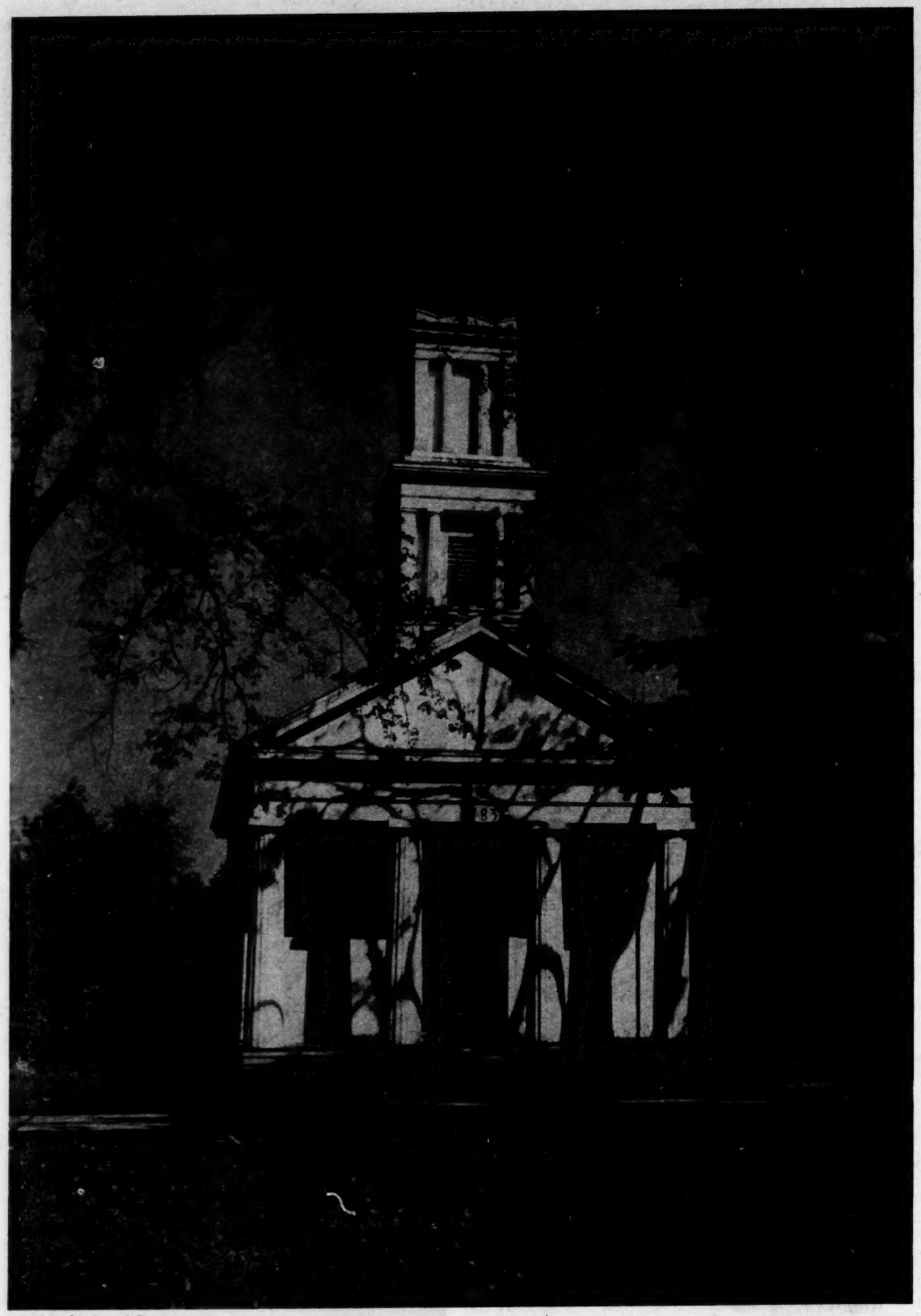


Josef Scaylea, From A. Devaney

S. M. Harlan

To the courts of the land will be brought from time to time this important question.

Shall the Church Be Taxed?

By FRANK H. YOST, Ph.D.

THE QUESTION OF THE TAXATION of church property is rife, and has been for some time. Many cases bearing on the matter have found their way into the courts, and the decisions differ widely from one another.

It is generally recognized that taxation has three purposes, or at least three results in operation: one, the raising of revenue; two, the regulation of or limitation upon the enterprise taxed; three, confiscation or destruction.

The Federal Government will not submit to taxation by other sovereignties, either by foreign powers or by the States within the United States. This is clearly because of the threat to sovereignty lying in the last two functions of taxation referred to above.

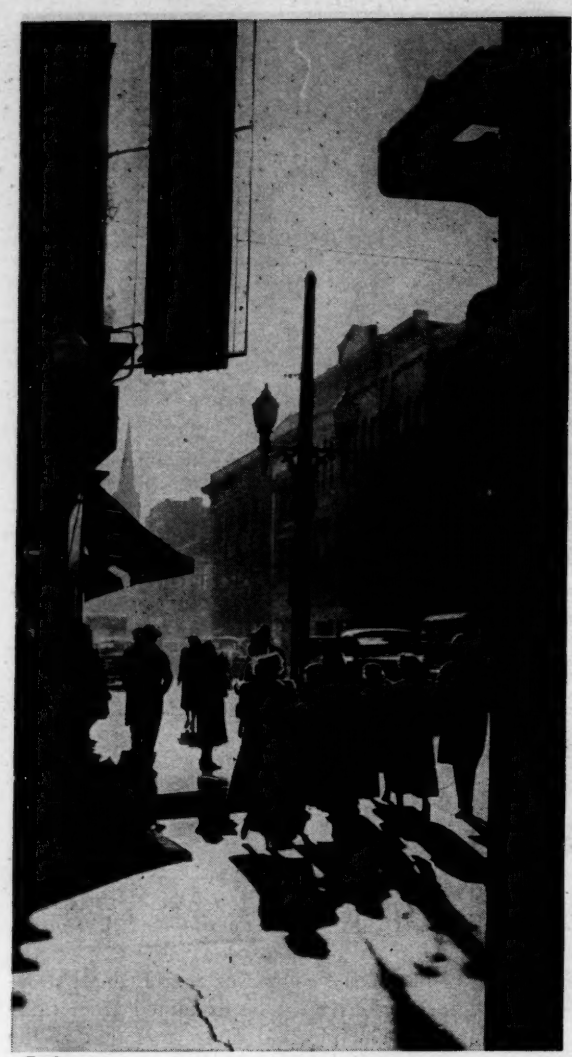
Early in the nineteenth century the United States set up banks, and one of these was established in Maryland. The Free State of Maryland levied a tax upon the bank, and the Federal Government refused to pay it. The State of Maryland took the case to court, and upon appeals, it reached the United States Supreme Court, where in 1819 it was decided under the caption, *McCulloch* v. *The State of Maryland, et al.*

The decision of the court was that Federal property and institutions must be exempted from taxation. But the principle laid down was that if the States could tax Federal property and institutions necessary to the existence of the Federal Government, they could by taxation destroy the Federal Government itself. We quote from the majority ruling:

"If the States may tax the bank, to what extent shall they tax it, and where shall they stop? An unlimited power to tax involves, necessarily, a power to destroy; because there is a limit beyond which no institution and no property can bear taxation. A question of constitutional power can hardly be made to depend on a question of more or less. If the States may tax, they have no limit but their discretion; and the bank, therefore, must depend on the discretion of the State governments for its existence." 17 US 327-329.

Although the case was not in any sense concerned with religion, its relevancy to the matter of taxation of church property is manifest. We do not claim sovereignty for the church. But we do claim for the church a unique position as an agent of God. As an

Churches of all faiths dot the landscape from Maine to California and from north to south. Should they be taxed?



Eva Luoma

Taxation is a very live issue at the present time. Every wage earner feels its heavy hand.

agent of God it must function on earth. If it cannot, it must fail to do the work of God on earth required of it.

In the United States there is separation of church and state. This means that organized religion, as the church, and organized political society, as the state, are not concerned with one another.

But the church does not operate in a vacuum. It does its work in the midst of organized society: that is, in the presence of the state. It must have certain physical properties upon which and from which it can carry on its assigned activities in the world. These physical properties must be in the presence of governed society. If the property that the church must have in order to function in this world is to be subject to taxation by the state, there is opened the possibility that the state can by taxation regulate the activities of the church, or even tax it out of existence.

It is not unrealistic to suppose a state taken over by men completely antichurch. The easiest way, perhaps the most painlessly effective way, for these men to curtail the work of the church, or to eliminate it entirely, would be through the extreme enforcement upon the church's properties of the tax laws which they would control.

The concept of the separation of church and state contains inherently the idea that the state is to operate free of interference from the church, and the church to prosecute its responsibilities free of interference from the state. Taxation by the state could be an unwarranted intrusion upon the freedom of the church.

The same danger could be in taxation upon the agents of the church. By this we do not mean to deny to the state the right to tax the agents of the church *as persons.* Every person living under a government should bear his fair share of the costs of government, no matter what his calling or profession. This cannot be too often repeated.

But taxation upon the agent of the church while he is functioning in his religious capacity is quite a different matter, and the difference is recognized in law. The Supreme Court of the United States has ruled in the case of a man selling religious literature, for instance, that he cannot be taxed *in that function.*

On May 3, 1943, the United States Supreme Court handed down a decision covering a group of eight cases, the leading case being *Murdock* v. *Pennsylvania,* in which it declared unconstitutional license fees levied upon the sale of religious literature. We quote:

"Spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as the more orthodox types. . . . The cases present a single issue—the constitutionality of an ordinance which as construed and applied requires religious colporteurs to pay a license tax as a condition to the pursuit of their activities. . . .

"The mere fact that religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise. . . . Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way. . . . It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact the tax from him for the privilege of delivering a sermon. . . . The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. . . . Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. . . .

"A license tax applied to activities guaranteed by the First Amendment would have . . . destructive

effect. . . . The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down." 319 US 105-117.

This decision is relevant to the subject at hand, perhaps more clearly than the McCulloch decision. The latter showed how the taxing of the institutions of one organism by another organism could be destructive, and the principle underlying the decision is applicable to religion.

But the Murdock decision deals with a matter of religion, and strikes down a civil ordinance which endeavored to tax a function of the church through its agents. The decision was a triumph for the freedom of religion.

We hold that the state cannot, except in disregard of the freedom of religion guaranteed in the United States and in the several States under the Federal Constitution, tax the church property essential to its functions of worship and propagation, nor the agents of the church while engaged in the act of carrying out its functions.

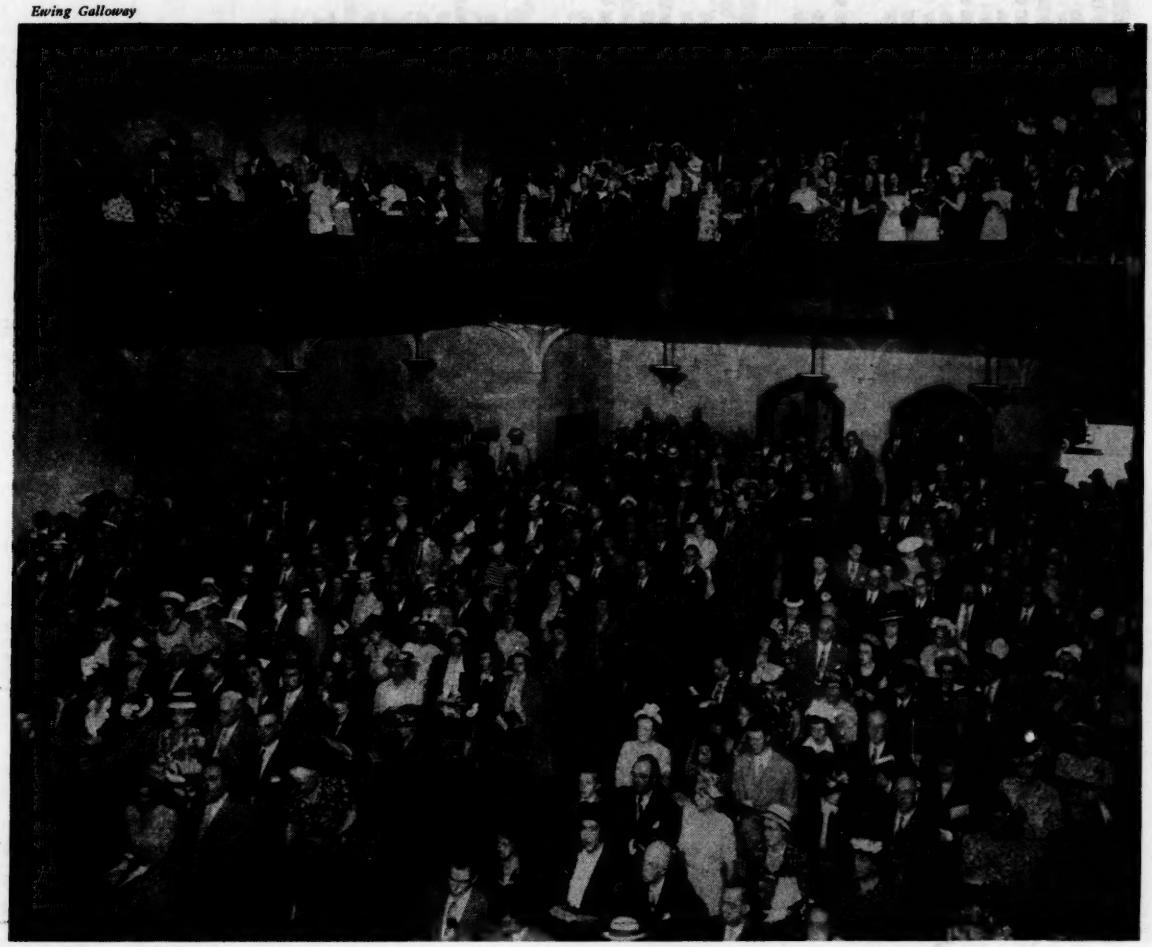
On the other hand, we see no reason why property owned by the church, which is used for manufacturing or commercial enterprises, should not be taxed. When the church operates farms, factories, apartment houses, or mercantile establishments, even though the profits from these enterprises go to the benefit of the church, they may well be taxed. They are competitive to corporate or privately owned establishments of the same kind, and are not directly a part of the church's function of worship or propagation.

We believe that just as a congregation raises the money to buy the coal or the oil to heat its building for worship, so it should pay its share of the heat furnished, say, from a municipal central heating plant, or of the water from the city reservoir.

But that the property of a church used for worship or for the propagation of its faith or the functioning of its properly constituted agents, should be subject to taxation is, we believe, dangerous to religious liberty and should not be advocated in a nation where, as in this one, the separation of church and state is inherent in our system of governmental and institutional relationships.

The question of taxing churches wholly used for worship raises the question of religious freedom, for taxation can also destroy.

Ewing Galloway



D. W. Corson, From A. Devaney

Religion in Public Schools—Some By-products

By PAUL K. FREIWIRTH

[Mr. Freiwirth is just entering upon editorial work in this country. He brings to us here practical admonition concerning religion in the public schools based on actual experiences of his own as a schoolboy abroad.—ED.]

NO GREATER SERVICE can be performed for humanity than to emphasize the obvious," so wrote Ralph Waldo Emerson, New England philosopher of the last century. Perhaps at no other time is emphasis upon the obvious so necessary as when matters concerning religious liberty come up for legal consideration. For religious liberty is particularly a liberty of the individual, and must often transcend what is at the moment locally legal. Sometimes, as with the teaching of religion in the public schools, a theory or idea is accepted locally in law, when, had the application of the same idea elsewhere been considered, perhaps in a foreign land, it would have been given up or greatly modified.

Practices, the soundness of which are in dispute, should always be studied by observing from all sides where they have been tried out, their full actual outworking and effects upon the lives of men and women, and particularly of boys and girls.

The observations just made apply specifically to the idea of teaching religion in the public schools. It is good—so the argument runs—for children to receive religious instruction. So far, so good—very good. Just one hour a week in the public schools, it is further urged, would surely take away very little time from the regular school curriculum. Further, according to this line of reasoning, if each child would be absolutely free to choose where he might receive his religious instruction, should he desire to receive any at all, there could be nothing compulsory about it, and the traditional American policy of religious freedom would in no wise be violated.

It all sounds very well, and in places in the United States where there is not a majority of any one faith, the collateral adverse effects of teaching religion in the public schools have not been easy to detect. But where one observes it in actual practice, under conditions less than favorable to individual freedom, he begins to wonder how he could possibly have been misled. For the problems soon begin to emerge.

Let me share some things I experienced during the part of my school days I spent outside the United States. In one country where I attended school religious instruction was given regularly in the public schools. In one sense there was nothing compulsory about it, for each student was left to decide whether to receive the instruction.

But in the school I attended members of one particular religious faith constituted an overwhelming majority, including most of the five hundred or so students in the school. The mere handful who belonged to a different religious persuasion were permitted to absent themselves from the religious instruction offered.

In theory, and the theory was written into law, all seemed well, and might have been except for two factors, which quite spoiled the operation of the plan. First, when it came to extracurricular activities such as sports, the lads belonging to the small minority group were left out, and everyone knew why. To be sure, those ostracized were never in any way deprived of full freedom to follow their religion, but lads in their teens are sensitive to another kind of liberty, social freedom. They crave hungrily to be accepted by the society in which they find themselves. If they are not accepted by it, psychological wounds are inflicted, very likely to induce emotional and social upheavals and disturbances in later life.

Not only that. Whatever seems to stand in the way of social acceptance can easily become a target for resentment, even if, as in the case of the boys under discussion, the obstruction is their religious belief. The giving of religious instruction in the public schools had accentuated religious differences, which in turn resulted in social distinctions. In an unfortunate sort of chain reaction, the little dissenters' feelings toward their own religion were affected. Against this sort of thing there can be no constitutional safeguards. A theory with supposed legal guarantees of liberty broke down in the context of actual conditions.

As if social ostracism were not already bad enough, there was a second adverse factor. One of the teachers unfortunately introduced religious controversy into one of his history lectures. With misdirected patriotic fervor, he pointed out how, many centuries ago, the spiritual ancestors of the religious minority in that school had tried to incite a conspiracy and revolt against their government.

That was all that was needed to ignite the latent sparks of prejudice into a conflagration. It usually takes very little to arouse teen-age lads, especially if it affords them a chance to expand their pent-up pugilistic energies. In short, from social ostracism developed open hostility, which resulted in actual fisticuffs. At these fights I was no pious bystander, sweetly bemoaning the despicable behavior of others while self-assured in my own innocence and virtue. I abstained from actual participation in the fights, but deep down in my heart I knew myself to be just as guilty before God as the most bellicose lad in the whole school. There was nothing I would have enjoyed better than to join wholeheartedly in this fanatical fracas, especially since, belonging to the majority group, I had nothing to fear. Why then did I remain apart, and not follow the insistent promptings of my immature emotions? Simply because only a few short months before, while attending school elsewhere, I had had the misfortune of being on the other side of the fence, with a minority, during the not-too-few, and very bitter, student brawls caused by parallel religious differences existing in that country. Therefore at this time, although with the majority, it was no physical weakness or spiritual superiority that kept me out of the free-for-all, but simply the morbid memories of the not-too-distant and somewhat painful past.

It must be pointed out that both the losers and the victors in this fight were in the long run losers, ethically and spiritually. And after all these are what really count the most. Cuts and bruises can be forgotten in a matter of days, but spiritual wounds, especially of the nature inflicted on that campus, do not heal so easily or completely, if they ever do heal.

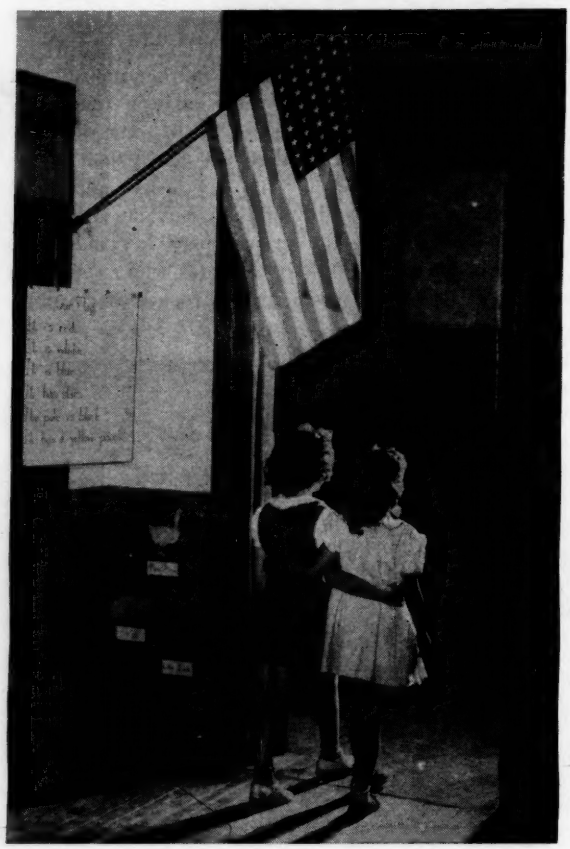
But what possible spiritual wounds could have been suffered by the five hundred or so lads who, in the strength of the majority, fought successfully for their religion with their fists? The very fact that they took recourse to physical power to defend a faith whose Founder had always rejected the arm of flesh, shows that their spiritual understanding and experience were imperfect. Not only that. Their action strengthened an inclination toward intolerance, an inclination that too readily becomes a habit of mind, and a very bad one.

The basis for this opinion is neither speculation nor imagination. I observed these lads for some time, and having kept up with the doings of some of them, I must inevitably draw this sad conclusion. Their religion has deteriorated into a theoretical affair, something to argue and fight about but not to live out in wholesome human relationships. They may help swell the numbers of their religious ranks, but they can hardly bring about spiritual strength while glorying in the flesh.

Fenno Jacobs, From Library of Congress

And how might the boys belonging to the minority have fared? I do not know today of the whereabouts of any of them, but I have known of similar cases elsewhere, and have seen what has happened to lads of the same age group who suffered for the faith they had been taught at home. If the child, already in a state of semirebellion against what to him is only a set of prohibitive rules and regulations, is forced to suffer because of his early faith, his natural inclination will be to turn his back on it at the first opportunity that avails itself. This will be especially so if, because of his religion, he is deprived in school of a thing as valuable and as precious to him as social acceptance.

Perhaps the experience related above may seem an extreme and unusual one. As a matter of fact, however, it has been repeated, and is in many places recurring now. One thing is sure: Many people would gladly receive religious instruction today and attend church regularly were it not that they have unpleasant memories of being forced to imbibe religion against their will when they were young. At that time they had no opportunity to rebel against it openly, so they patiently waited for the day when they could do so. One would think that upon coming of age their more mature sense of judgment would persuade them of the folly of their course, but alas, man is frequently far from rational in many of his acts, especially if hate, bitterness, and resentment are his motivating passions.



How regrettable, in the light of all these facts, that many well-meaning but unenlightened advocates of religious instruction in public schools do not realize that by introducing religion into the school system they actually defeat their own purposes! Religion in the public school sets up rivalries among the children, not only between those of different religious affiliations, but also between those who have a religion and those who do not. The child begins, consequently, to associate religion with unpleasant matters and to develop a deep-rooted and lasting aversion for religion. Granted that some good may result from teaching religion in public schools, it is not nearly enough even to begin to compensate for all the many unpleasant by-products.

Whenever religious teaching is introduced into the program of the public school, even though it be several sorts of religion, and, theoretically, on a fair and equal basis, *all* the pupils sustain a loss, majority as well as minority, exactly in the spiritual strength and integrity that the instruction was intended to foster. The avid attempts of certain groups to increase religion among the young by securing legal permission for the teaching of religion in public schools shows a disregard for the adverse effects. In saying this I do not advocate the bringing up of children without a knowledge of God. Quite to the contrary, I firmly hold that the education of no child is complete unless the fundamental fact of the existence of God is made the very core of his life. I would affirm just as strongly, however, that the public school is the least suitable place in which to acquaint the child with his Maker. Many a young person has been hardened against the reception of religious instruction in later life because he was forced to listen to it against his will while attending school.

"There is all the difference in the world between letting children out of school, and releasing them for religious instruction," declared Judge Felix Frankfurter of the U.S. Supreme Court recently, in the setting of the New York case for weekday religious instruction. Thank God for men who have the clear discernment to differentiate between that which is genuinely good for liberty and that which only appears to be so on the surface! May God grant that this country long enjoy such wise leadership, and also be blessed with a citizenry of equal wisdom and insight, in order that true religion may flourish and prosper in the greatest possible freedom!

Happy are the children who are taught in their schools to love their country and to respect their flag. Such children become good citizens and bring honor to their native land.

Fenno Jacobs, From Library of Congress

The Supreme Court as Protector of Freedom of Religion*

By LEO PFEFFER

[Leo Pfeffer, J.D., New York City, is associate general counsel of the American Jewish Congress, and a member of the bars of the United States Supreme Court and the State of New York. He was formerly editor of the New York University Law Review, Appeal News and Statute Digest, and the New York Law Jist. He is author of numerous articles in legal and general publications on the subject of religious liberty and the separation of church and state. —EDITORS.]

Free Exercise of Religion

FOR ALMOST A CENTURY AND A HALF after the adoption of the First Amendment, the jurisdiction of the Supreme Court was rarely invoked for the protection of religious freedom. The struggle for freedom from compulsion in religious affairs had been substantially won by 1791 when the amendment's ban on laws by Congress prohibiting the free exercise of religion was added to the Constitution. Two facts were principally responsible for the victory.

In the first place, the major cause of governmental restrictions on religious liberty (at least before the advent of antireligious totalitarianisms) had been the presence of a dominant sect exploiting the coercive arm of government to protect and promote its tenets and preserve its dominant status. America had been colonized during a period of religious revolts and counterrevolts. As a result, the country was populated, when the Constitution was adopted, not by a single sect, but by a multiplicity of sects which had painfully learned to live together in comparative peace but retained a sufficient degree of mutual suspicion to keep them vigilant against potential dominance by any one of them.

In the second place, loyalty to any formalized religion was of little significance among the people of the new republic. Not more than one out of eight Americans, and possibly as few as one out of twenty-five, belonged to any church.[1] Religious motivations were of even less significance among the political leaders, many of whom were greatly influenced by the rationalism and liberalism of the French Enlightenment.[2] Their principal concern in defining the relationship of religion to the newly established government was to prevent repetition in this country of the "oppressive measures adopted, and the cruelties and punishments inflicted by the governments of Europe for many ages, to compel parties to conform, in their religious beliefs and modes of worshiping, to the views of the most numerous sect."[3]

The multiplicity of sects which existed in 1791 was increased in the nineteenth century by further divisions among existing sects and large-scale immigration from Europe.[4] Nor was the era of expanding nationalism and industrial revolution which followed adoption of our Constitution conducive to the espousal of religious dogmas with the intensity of passion necessary for the coercive imposition of those dogmas upon the unsaved. Occasional acts of ceremonial obeisance, such as placing "In God We Trust" on—of all things—the currency of the realm were tolerated; but beyond that, the highly individualistic American society felt that religion was a private matter. There was, therefore, little serious challenge in the first century and a half of our constitutional history to the victory which had been formalized in the First Amendment, and little occasion for the Supreme Court to defend that victory.

Applicability to State Action

Moreover, it was early decided that the protection of the First Amendment was limited to federal action and did not extend to restrictions by state governments of the rights guaranteed by the First Amend-

* "Reprinted from the May 1951 issue of THE ANNALS of the American Academy of Political and Social Science, in which the article appeared under the title of "The Supreme Court as Protector of Civil Rights: Freedom of Religion."

[1] Anson Phelps Stokes, *Church and State in the United States* (New York, 1950), Vol. 1, pp. 229, 230; W. E. Garrison, "The History of Anti-Catholicism in America," *Social Action*, January 15, 1948, p. 9.

[2] Charles A. Beard and Mary R. Beard, *The Rise of American Civilization* (New York, 1947), Vol. 1, p. 449.

[3] Davis v. Beason, 133 U.S. 333 at 342 (1890).

[4] In 1936 there were at least 256 religious sects in the United States. *Census of Religious Bodies* (Washington: U.S. Department of Commerce), p. 17.

ment.[5] Even after adoption of the Fourteenth Amendment, with its limitations on action by the states, it was long assumed that no change had thereby been effected with respect to the freedoms guaranteed by the First Amendment.[6] Hence, the Supreme Court could intervene to protect a claimed violation of religious freedom only when the violation was committed by an arm of the federal government, as the application of a Territorial law prohibiting polygamy against a Mormon to whom plural marriages were a religious duty;[7] or when a state restriction on religious freedom could be attacked in accordance with the conventional formulas approved by the Court for the protection of property rights—as a claim that a compulsory Sunday observance law interfered with congressional power to regulate interstate commerce.[8]

It was only after the Supreme Court determined that the specific inhibitions of federal action contained in the First Amendment were rendered applicable to the states by the Fourteenth Amendment that a sufficient number of appeals to the Court were made to provide the raw material necessary for the fashioning of a federal constitutional law of religious freedom. That determination is so firmly established today[9] that an examination into its validity here would serve no useful purpose. It is sufficient to point out that the incorporation of religious freedom into the "liberty" protected by the Fourteenth Amendment from state deprivation without due process was an inextricable part of the revolutionary process which brought the political freedoms of the First Amendment within the purview of that concept.[10] It may also be suggested that until the adoption of this interpretation of the Fourteenth Amendment, the Supreme Court played an almost insignificant role as protector of civil liberties. It may further be suggested that, in view of the limited area for federal interference with religious freedom, the value of the relevant clause of the First Amendment would be small if it were not accorded practical application through incorporation into the Fourteenth Amendment.

Legal Pattern Evolved

The Supreme Court's decision to review state interference with religious freedom evoked a host of cases by Jehovah's Witnesses, an unpopular religious sect which combined aggressive proselytizing tactics with a readiness to invoke judicial protection whenever those activities aroused an indignant municipality to take counter measures. The decisions of the Supreme Court in the Jehovah's Witnesses cases have received considerable analytical consideration[11] and need not be reviewed here in detail. It is sufficient for our purpose to outline the discernible pattern of constitutional law respecting religious freedom which evolved from those decisions.[12] Briefly, it may be summarized as follows:

The constitutional restrictions on laws prohibiting the free exercise of religion are the same as those on laws abridging freedom of speech, press, and assembly. Indeed, the first Jehovah's Witnesses cases were decided under the freedom of speech and of press guarantees, without reference to freedom of religion. The "clear and present danger" test applies equally to all rights guaranteed by the First Amendment. Hence, a restriction of religious freedom is constitutionally justifiable only if clearly and immediately necessary to protect an interest more important to democratic society than the unrestricted exercise of religion. Three value judgments must be exercised by the Court in passing on a claim of infringement of religious liberty: first, the importance of the threatened interest as against that of the infringed right; second, the presence and clarity of the danger to the threatened interest; and third, the practicability of avoiding the danger by an "alternative method," that is, one which does not require infringement of the constitutional right.

In each case, judgment must be exercised in the light of the preferred position accorded by our constitutional democracy to the freedoms secured by the First Amendment. The presumption of constitutionality enjoyed by legislative regulation of commercial interests is absent here. Indeed, the presumption is almost reversed; the burden of establishing constitutionality is upon those seeking to justify a restriction of a right secured by the First Amendment.

Hence, the superior importance of the protected interest must be clear. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitations. The danger to the paramount interest must be equally clear and present, not remote or doubtful. Finally, it must be established with reasonable certainty that the restriction imposed upon the right guaranteed by the First Amendment is necessary to meet the danger and that the danger cannot adequately be met by measures which do not infringe upon the guaranteed right. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support

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[5] Permoli v. New Orleans, 44 U.S. 589 at 609 (1845).
[6] Prudential Insurance Co. v. Cheek, 259 U.S. 530 (1922).
[7] Reynolds v. United States, 98 U.S. 145 (1878).
[8] Hennington v. Georgia, 163 U.S. 300 (1896).
[9] See, *inter alia*, cases cited in footnote 22 in Everson v. Board of Education, 330 U.S. 1 at 15 (1947).
[10] See John Raeburn Green, "Liberty Under the Fourteenth Amendment," 27 *Washington University Law Quarterly* 251 (1942); Leo Pfeffer, "Religion, Education and the Constitution," 8 *Lawyers Guild Review* 387 (1948).
[11] See, e.g., Edward F. Waite, "The Debt of Constitutional Law to Jehovah's Witnesses," 28 *Minnesota Law Review* 209 (1944); Hollis W. Barber, "Religious Liberty v. The Police Power, Jehovah's Witnesses," 16 *American Political Science Review* 226 (1947); Frances J. Powers, *Religious Liberty and the Police Power of the State*, doctoral dissertation, Catholic University, Washington, D.C., 1948. See also articles cited in footnote 15 of West Virginia State Board of Education v. Barnette, 319 U.S. 624, at p. 635 (1943).
[12] See particularly: West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943); Prince v. Massachusetts, 321 U.S. 158 (1944); Thomas v. Collins, 323 U.S. 516 (1943) (not a Jehovah's Witnesses case); Marsh v. Alabama, 326 U.S. 501 (1946); Schneider v. New Jersey, 308 U.S. 147 (1939); Cantwell v. Connecticut, 310 U.S. 296 (1940); Niemotko v. Maryland, 19 U.S. Law Week 4095 (1951).

legislation against attack upon due process grounds, will not suffice.

Dissenting Opinions

The foregoing is a composite of the holdings in the Jehovah's Witnesses cases. There have, however, been two expressed dissents: a qualified one by Justice Jackson, and an absolute one by Justice Frankfurter. Justice Jackson [13] would use these criteria of judgment only in cases involving restrictions upon activities which concern only members of the faith. Where, however, a religious group enters the secular market, as where it sells books or pamphlets, it must compete on equal grounds with secular interests, and its activities are equally subject to state regulations, which are valid if not arbitrary and capricious and not discriminatory against religiously motivated activities.

Justice Frankfurter's dissent is basic.[14] To him there are no preferred constitutional rights; restrictions on religious interests are entitled to neither more nor less judicial protection than restrictions on commercial interests. In both cases, unconstitutionality may be adjudged only on a finding of absence of rational justification for the legislation. The "clear and present danger" doctrine has no relevance to restrictions on religious freedom. Such restrictions, like all legislative action, are presumed valid. Only legislation which interferes with the effective means of inducing political change warrants suspicious judicial scrutiny. In all other cases, the value judgments required by the "clear and present danger" doctrine must, in a democracy, be exercised by the people's legislators subject to revocation or revision by the people's action at the ballot box.

Communal Interest Versus Religious Right

However, the composite of holdings previously set forth represents a reasonable approximation of the present status of the constitutional law of religious freedom. The approach which has been suggested is explicit in many of the religious freedom cases, and, it is submitted, implicit in all—even those decided without reference to religious freedom. In some cases there could be little dispute with the judgments exercised involving the communal interests sought to be protected, the gravity of the danger to that interest, and the necessity of infringing religious freedom to avert the danger. In others, sharp divergences were expressed by different courts and by different judges in the same court.

Thus, there was no dissent from a determination that the interest of the American community in the monogamous family was paramount to Mormons' religious belief in the duty of plural marriages, and that the danger to the communal interest could be avoided only by proscribing polygamous marriages.[15] The state's clearly paramount interest in preventing spread of communicable diseases overrides religious objections to vaccination and validates compulsory vaccination laws.[16] The security of the state empowers enactment of compulsory military service laws.[17] The interest of society in the physical and moral welfare of children takes precedence over the religious obligation of young Jehovah's Witnesses to sell sectarian publications on the public streets (although it is fairly arguable that the children's conduct did not represent a danger to the protected interest sufficiently grave to warrant interference with their religious freedom).[18]

On the other hand, the state's interest in protecting the enjoyment of private property must yield to the rights of religious missionaries who knock on house doors and ring doorbells to summon the occupants for the purpose of offering their religious tracts,[19] or who seek to enter a privately owned company town for the same purpose.[20]

In most of the instances in which the claim of unconstitutional infringement was sustained, the Court did not dispute the legislative admeasurement of ultimate values as between the communal interest and the religious right, but denied only the clear necessity of the infringement of the latter to protect the former.

Thus, while it may be assumed that the interest of the state of Oregon in a secularly educated citizenry is of paramount importance, that interest might adequately be protected without proscribing parochial schools and requiring all children to attend public schools.[21]

The constitutional method of protecting the community's interest in unlittered streets is arresting litterers, not banning handbill distribution.[22]

The state's interest in preventing fraud may be adequately protected without conferring upon a public official the power to decide what constitutes a bona fide religious cause and to withhold from any disapproved by him the right to solicit public contributions,[23] or conferring upon a jury the power to determine whether claimed supernatural revelations were really experienced by a person soliciting funds on the representation that they had occurred.[24]

Nor is it a clearly necessary (if, indeed, efficacious) means of promoting national loyalty to compel objecting children to engage in a ceremonial act such as saluting the flag.[25] And disturbances of the peace can

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[13] See particularly his dissent in Prince v. Massachusetts, 321 U.S. 158 (1944).
[14] See particularly his dissent in West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).
[15] Reynolds v. United States, 98 U.S. 145 (1896); Davis v. Beason, 133 U.S. 333 (1890).
[16] Jacobson v. Massachusetts, 197 U.S. 11 (1905).
[17] Hamilton v. Regents of University of California, 293 U.S. 245 (1934).
[18] Prince v. Massachusetts, 321 U.S. 158 (1944).
[19] Martin v. Struthers, 319 U.S. 141 (1943).
[20] Marsh v. Alabama, 326 U.S. 501 (1946).
[21] Pierce v. Society of Sisters, 268 U.S. 510 (1925).
[22] Schneider v. New Jersey, 308 U.S. 147 (1939).
[23] Cantwell v. Connecticut, 310 U.S. 296 (1940).
[24] United States v. Ballard, 322 U.S. 78 (1944).
[25] West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

be avoided by methods other than granting a municipal official unbridled discretion to grant or withhold permits for public religious meetings.[26]

Cases Pending

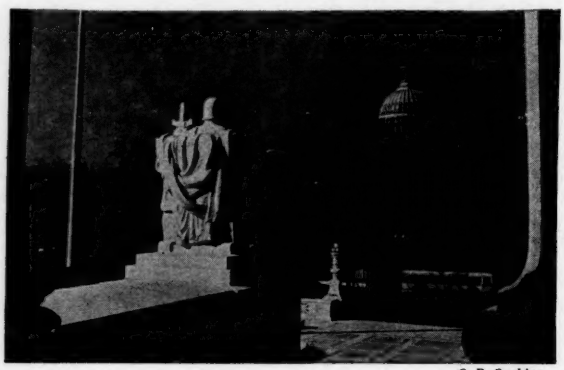
These are but a few of the Supreme Court holdings in cases involving infringements of religious freedom, but they are typical and illustrate the approach above suggested to the solution of the conflicting claims. The same approach is likely to be implicit, if not explicit, in the Supreme Court's adjudication of conflicting claims in the religious freedom cases which are now before it or which it may shortly be called upon to entertain. As of the time of this writing, the following are the most significant of these cases.

1. The Court has refused to review two cases involving the constitutionality of zoning ordinances which prohibit use of buildings for church or church school purposes in certain residential districts.[27] However, other similar cases are pending in lower courts, and the issue may ultimately be accepted by the Supreme Court for definitive adjudication.[28]

2. The highest New York State Court has upheld the constitutionality of a compulsory Sunday observance law, even as applied against Jewish retailers who religiously observe Saturday as their day of rest. The court overruled the defendants' contention that the Sunday statute is a religious law, and that even if it is a civil law designed to assure one day of rest in seven, that purpose can be achieved without compelling observance of Sunday as the day of rest.[29] The Supreme Court has been asked to review this holding.

3. An intermediate appellate court in New York is considering an appeal by an extreme Orthodox Jewish parent who claims that a statute requiring a minimum secular education of all children violates his religious freedom.[30] The point was not expressly decided in the Oregon case or in any other case by the Supreme Court, which will be asked to review an expected adverse decision in the New York courts.

4. An intermediate appellate court in Ohio is considering an appeal from a decision upholding the denial of unemployment compensation benefits to a Jew whose religious convictions compelled his refusal of a proffered position requiring Saturday work.[31] An adverse determination is expected, since the state's highest court has previously disallowed a similar claim.[32] The Supreme Court will be asked to review.



C. P. Cushing

Establishment of Religion

The First Amendment contains a dual prohibition; it bars not only laws prohibiting the free exercise of religion, but also laws respecting an establishment of religion. Here, too, the Supreme Court had little occasion for one hundred and fifty years to give extensive consideration to the scope and meaning of the clause. While there were more instances of federal action which might be attacked under the establishment clause than under the free exercise clause, a person seeking relief under the latter clause always has a direct obvious interest in the dispute (such as keeping himself out of jail); while one seeking to restrain action under the establishment clause usually has no such direct interest. Only rarely can an ardent protagonist of the cause of secularism in government be found willing to bear the burden of considerable financial expense and the disfavor of his neighbors merely to vindicate a principle.

In any event, the establishment prohibition was involved in only four Supreme Court cases before 1947. In *Watson v. Jones,*[33] the Court intimated that the clause prohibited a federal court at least from reviewing an ecclesiastical body's determination of church dogma or organization. In *Bradfield v. Roberts,*[34] the Court distinguished between a hospital corporation and the order of nuns which controlled it, holding that a congressional appropriation to the corporation did not violate the First Amendment—a holding which exalted to constitutional status the fiction of a corporation's separate entity. The Court remarked that a "law respecting a religious establishment" is not synonymous with the amendment's phrase, "law respecting an establishment of religion," although Madison, who drafted the amendment and therefore was in a position to know, used the phrases synonymously.[35]

In *Quick Bear v. Leupp,*[36] the Court distinguished between appropriations from public funds for the sup-

[26] Niemotko v. Maryland, 19 U.S. Law Week 4095 (1951).
[27] Corporation of Presiding Bishop v. city of Porterville, appeal dismissed for want of a substantial federal question, October 19, 1949; Boston Edison Protective Association v. Temple of Light, certiorari denied October 9, 1950.
[28] Case in San Jose, Calif., reported in *Religious News Service,* October 3, 1950; Kelly v. Town of Dover, Superior Court of Suffolk, Mass.
[29] People v. Friedman, decided by New York Court of Appeals, December 1, 1950.
[30] People (Silverman) v. Donner, Appellate Division, 2nd Department. The decision has since been affirmed, *New York Law Journal,* March 13, 1951, p. 902.
[31] *In re* Claim of Mary Jane Heisler, Ohio Appeals, Mahoning County.
[32] Kut v. Bureau of Unemployment Compensation, 146 Ohio S. 522 (1946).
[33] 13 Wall. 679 (1872).
[34] 175 U.S. 291 (1899).
[35] James O. Richardson (Ed.), *Messages and Papers of the Presidents,* New York, 1924, Vol. 1, pp. 489, 490.
[36] 210 U.S. 50 (1908).

port of religious education and appropriations from funds held in trust by the government for the benefit of Indian tribes, and held that such trust funds could be expended for the upkeep of Catholic mission schools at the direction of the Indian beneficial owners of the funds. And in the *Selective Draft Law Cases*,[37] a contention that the exemption granted to ministers of religion constituted a forbidden law respecting an establishment of religion was held so lacking in merit as to require no consideration.

National Archives

One of the medallions on the National Archives Building in Washington, D.C. It represents Justice with the statute books of the law and the reins of guidance.

Two Far-reaching Decisions

In 1947 and 1948, the Supreme Court handed down two landmark decisions. In *Everson v. Board of Education*[38] it upheld a statute authorizing reimbursement out of public funds of children's transportation expenses to parochial schools. In *People ex rel. McCollum v. Board of Education of Champaign, Ill.*[39] it invalidated a statute construed to permit release of children from partial public school attendance to partake of religious instruction. Besides these specific holdings (which will be considered below), the cases established that the establishment clause, no less than the free exercise clause, was incorporated into the Fourteenth Amendment as a restriction on state action. In addition, they sought to give definitive meaning to the clause in the following now well-known language:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State."

Both holdings, the incorporation and interpretation, have been subjected to severe criticism primarily, although not exclusively, from sectarian and other nonlegal sources.[40] With respect to the first holding, there can, of course, be no dispute in logic with those [41] who contend that no part of the First Amendment was incorporated into the Fourteenth. It is, however, much too late now to quarrel with the quarter-century of decisions which brought the freedoms of the First Amendment into the "liberty" of the Fourteenth.

Question of Non-establishment

More serious is the contention that while the free exercise of religion is encompassed by the Fourteenth Amendment, freedom from an establishment of religion is not. It is thus stated by Professor Edward S. Corwin:

> . . . the Fourteenth Amendment does not authorize the Court to substitute the word "state" for "Congress" in the ban imposed by the First Amendment on laws "respecting an establishment of religion." *So far as the Fourteenth Amendment is concerned, states are entirely free to establish religions, provided they do not deprive anybody of religious liberty.* It is only *liberty* the Fourteenth Amendment protects. And in this connection it should not be overlooked that contemporary England manages to maintain as complete freedom of religion as exists in this country alongside an establishment of religion, although originally that establishment involved a ban upon all other faiths.[42]

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[37] 245 U.S. 366 (1918).
[38] 330 U.S. 1 (1947).
[39] 333 U.S. 203 (1948).
[40] J. M. O'Neill, *Religion and Education Under the Constitution*, New York, 1949; Wilfred Parsons, *The First Freedom*, New York, 1948; Edward S. Corwin, "The Supreme Court as National School Board," *Law and Contemporary Problems*, Vol. 14, p. 3; John Courtney Murray, "Law or Prepossessions?" *ibid.*, p. 22; Charles Fahy, "Religion, Education and the Supreme Court," *ibid.*, p. 73; Statement of Administrative Board of National Catholic Welfare Conference, *New York Times*, Nov. 21, 1948, p. 63.
[41] E.g. O'Neill, *op. cit.* note 40 *supra*, Chap. 10.
[42] Corwin, *op. cit.* note 40 *supra*, at p. 19. Italics in original.

But England's constitutional history is quite different from ours. In England there has been no substantial struggle for disestablishment—only an evolution of religious liberty. In our country, the struggle for religious liberty was a facet of the struggle for disestablishment, and vice versa. There were not two struggles, but one. The unity of the struggle is manifested in every great document in the history of American religious freedom—Roger Williams' *Bloody Tenet of Persecution,*[42] Madison's *Memorial and Remonstrance,* and Jefferson's *Statute for Establishing Religious Freedom*[43] are the most significant. Indeed, the text of the First Amendment prohibits laws respecting an establishment of religion before it prohibits laws prohibiting the free exercise thereof, expressing the conviction of the Constitutional Fathers that the free exercise of religion could not be guaranteed unless nonestablishment were also guaranteed.

None of the Jehovah's Witnesses decisions intimated that only the exercise prohibition of the First Amendment was incorporated into the Fourteenth. Several contain language indicating a clear contrary intent.[45] In any event, it is unlikely that the divorce will be effected by the Supreme Court in the foreseeable future, and it may reasonably be assumed that freedom from established religion is an unseverable part of religious freedom and equally subject to the Supreme Court's protective jurisdiction.

Opposition to Church-State Separation

Whether the second holding of the *Everson* and *McCollum* cases will likewise survive is unfortunately not equally certain. It will require a courageous Court to withstand the acrimonious criticism, often extending beyond the bounds of dignity and good taste, which has greeted the *McCollum* decision and its application of the interpretation of the First Amendment pronounced in the *Everson* decision. This criticism has been buttressed by a combination of superficial historical research and selective quotations initially supplied by a professor of speech turned legal scholar,[46] accorded dogmatic status by the Catholic hierarchy in America, and accepted as unanswerable even by some who are not subject to church discipline.

Briefly, their thesis is this: The First Amendment was not intended to effect a separation of church and state or to require the state to be neutral as between believers and nonbelievers; it was intended only to prohibit the granting of a dominant, preferred status to one sect, and not to foreclose nonpreferential aid to all religious groups. Only summary comment is possible here on some of the arguments offered in support of this thesis.

1. It is urged that the term "establishment" has a limited, definite meaning; a single, formal, monopolistic union of one religion with government. The Encyclopaedia Britannica, fourteenth edition, is cited in support. But in 1791 the term had a far broader meaning. It was used by Jefferson in the title of his Statute for Establishing Religious Freedom. It was used in describing a measure as closely approximating nonpreferential aid to religion as could practicably be conceived, the Virginia Bill Establishing a Provision for Teachers of the Christian Religion. (There were no teachers of non-Christian religion in Virginia.[47])

Moreover, the definition argument proves too much. If the First Amendment forbids only a formally established, dominant church, as the established Church of England, it does not forbid a grant of public funds to a sectarian group without conferring upon that group the formal dominant status contemplated by the definition of establishment. Such a contention makes the decisions in *Bradfield v. Roberts* and *Quick Bear v. Leupp* meaningless. For why argue that a grant to a secular corporation controlled by a sectarian group is constitutional, if the grant to the sectarian group would itself be constitutional? And why argue that funds held in trust may be expended for sectarian purposes if nontrust funds may be expended for the same purpose?

2. It is urged that while Madison opposed a state's use of public funds for nonpreferential aid to religion, as evidenced by his struggle against the Virginia Assessment Bill, he did not intend to impose a similar restriction upon the federal government. But all the arguments asserted in the Remonstrance against the Assessment Bill are at least equally applicable to a grant of public aid by the federal government. One, indeed, is far more cogent. Madison argued that because "religion [is] exempted from the authority of the Society at large, still less can it be subject to that of the Legislative Body" whose "jurisdiction is both derivative and limited." As the Tenth Amendment makes explicit, the powers of the federal legislature are even more derivative and limited than those of state legislatures.

3. It is argued that other versions of the First Amendment considered by Congress indicate the limited meaning rejected in the *Everson* and *McCollum* decisions. Thus, one proposal was: "The civil

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[42] Joseph L. Blau (Ed.), *Cornerstones of Religious Freedom in America* (Boston, 1949), p. 36.
[43] *Ibid.*, pp. 81, 74.
[45] Cantwell v. Connecticut, 310 U.S. at p. 303; Minersville School District v. Gobitis, 310 U.S. at p. 593; Murdock v. Pennsylvania, 319 U.S. at p. 108.
[46] J. M. O'Neill, *op. cit.* note 40 *supra.*
[47] There probably were not a half-dozen Jewish families in Virginia in 1785. See U.S. Bureau of the Census, *A Century of Population Growth, 1790-1900* (Washington, 1909), p. 116; A. V. Goodman, *American Overture* (Philadelphia, 1947), pp. 148, 149.

rights of none shall be abridged on account of religious belief, nor shall any national religion be established. . . ." Another read: "No religion shall be established by law, nor shall the equal rights of conscience be infringed."

But argument from unadopted proposals is two-edged; these proposals may have been rejected because they did not express Congress' intent, rather than because they did. Moreover, if unadopted proposals are to be considered, equal weight, at least, should be given to the following which was approved by the Committee of the Whole House: "Congress shall make no laws touching religion or infringing the rights of conscience."

4. It is urged that the framers of the First Amendment were the friends of religion, not its enemies, and therefore could not have intended to hurt religion by barring it from governmental aid. But Madison, Jefferson, and their colleagues were convinced and argued strenuously that governmental aid injured rather than helped religion, and that government could best aid religion by leaving it strictly alone.

5. Finally, it is argued that the presence of chaplains in Congress and the armed forces, tax exemption to religious institutions, "In God We Trust" upon our coins, and so forth, indicate an intent to encourage and aid religion and are inconsistent with a tradition or ideal of absolute separation of religion and government. But the area of religion and government is not the only one in which practice lags behind ideal. The validity of the American ideal of equality is not vitiated by the unequal treatment suffered by Negroes. Nor is the validity of the American tradition of freedom of expression vitiated by the widespread limitations upon that freedom in actual practice. It is submitted that the gap between principle and practice is far narrower in the area of government-religion relations than in the area of race relations or civil liberties.

Basically, the anti-*Everson-McCollum* thesis denies the entire American tradition with respect to religion. That tradition has been expressed by Roger Williams and Madison and Jefferson in language asserting that religion is outside the jurisdiction of political government. It is expressed in the popular aphorism that "religion is a private matter." It is manifested in the almost universal elevation to creedal status of Jefferson's metaphor respecting the "wall of separation between Church and State." It was only recently reaffirmed in the overwhelming vote of the democratically convened Mid-Century White House Conference on Children and Youth, which defeated every carefully planned attempt by sectarian groups to deny or impair that tradition.[48]

Open Questions

The specific holdings of the *Everson* and *McCollum* decisions leave a number of questions either wholly or partly unanswered. In the *Everson* case, the expenditure of public funds for transportation expenses to parochial schools was held constitutionally permissible because those schools met the state's secular educational requirements. In 1929 the Supreme Court (in *Cochran v. Board of Education*[49]), without reference to the First Amendment, upheld the grant of secular textbooks to parochial schools. How far, then, can the states go in aiding parochial schools? What of nondenominational supplies such as blackboards, notebooks, and pencils? What of the salaries of secular teachers or the pro rata salaries of nuns teaching both secular and sectarian subjects? What of the upkeep or even construction of parochial school buildings, leaving only the crucifixes, holy fonts, and other sectarian articles to be paid for out of private funds? Does the logic of the *Cochran* and *Everson* decisions require validation of these expenditures, and if so, what is left of the First Amendment?

As far as is known, no case is presently pending (at least none which is likely to reach the Supreme Court) in which these issues are presented. Ultimately, however, the Supreme Court may have to decide them. It is submitted that at that time the Court will be able to preserve the integrity of the principles announced in the *Everson* decision only by overruling the specific holding of that decision.

The Supreme Court will much sooner be required to answer some questions left open by the *McCollum* decision. Two important cases are on their way for adjudication by the Court. One involves the legality of Bible reading in the public schools. The highest court in New Jersey upheld the validity of a statute requiring daily reading of five verses from the Old Testament.[50] The state decisions on the question are in conflict, the majority upholding Bible reading. Since Bible reading in the public school is a devotional act, the logic of the *Everson-McCollum* principles would seem clearly to require reversal of the New Jersey Court.

In the second case, the Court will be required to pass on the validity of the New York City released time system. In New York, unlike Champaign, released time religious instruction is not held on the public school premises, and public school participation is allegedly limited to releasing from secular instruction those children willing to take religious instruction. In a 3 to 2 decision, an intermediate appellate court has held that these differences are constitu-

[48] Janet Freeman and Naomi Bronheim, "In the Democratic Tradition," *Congress Weekly*, Vol. 18 (January 1, 1951), p. 4.
[49] 281 U.S. 370 (1929).
[50] Doremus v. Board of Education, decided October 16, 1950.

tionally significant and that the New York City system is constitutional.[61] However, it would seem that, here too, adherence to the *Everson-McCollum* principles would require reversal of the New York Court's decision, for the bargain made with parents to release their children for religious instruction during school hours is clearly in itself a substantial aid to religion.

While the struggle for freedom from religious compulsion is substantially won, the struggle for state-church separation is a continuing one. It will succeed only if the Supreme Court in its role of protector of religious freedom remains steadfast to the proposition that complete separation of church and state is an integral and unseverable part of religious freedom, and that "separation means separation, not something less." [62]

[61] *Matter of* Zorach and Gluck v. Clauson, Appellate Division, 2nd Dept., decided January 15, 1951.

[62] Justice Frankfurter concurring in McCollum case.

EDITORIALS

Mrs. McCollum Writes

MRS. VASHTI MCCOLLUM, a welcome contributor to the current issue of LIBERTY, won in 1948 before the Supreme Court of the United States a decision that resulted in the elimination of religion courses in the public schools of Illinois, conducted on the school grounds on school time.

The victory for the separation of church and state which the successful denouement of her case punctuated has not been lost by the decision last summer of the Supreme Court of the United States, approving the dismissed-time plan of religious instruction in operation in New York. But its effects will need to be watched. An opportunity for this may soon be afforded in Illinois. The Champaign-Urbana Ministerial Association, in the very locality where Mrs. McCollum's fight began, has put at work three committees to map out a program of religious instruction through the method of dismissed-time seemingly permissible under the recent New York decision.

The Reverend Luther P. Powell, pastor of the First Presbyterian Church of Urbana, is reported to have admitted that released-time religious classes, whether conducted in or off public school property, "use the schools as recruiting agents to obtain their pupils."

The editors of LIBERTY have early and late warned its readers of these dangers in any plan of religious courses tied in any way to the public schools: the use of school machinery to arrange for pupils to attend upon the religious courses, and, as a corollary, the use of the truancy officers to check upon attendance. Here is the crossing of a threshold through a door slowly opening to the use of government for the establishment and exercise of religion. Should a powerful religious organization gain control of the machinery of public education, what would become of our system of free schools?

F. H. Y.

The Supreme Court Libel Decision

THE LIBELING OF A GROUP, religious or racial, has been since 1917 a misdemeanor in the State of Illinois. A law of that State provides that—"it shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots."

This law is the outgrowth of a movement forty or more years old, very active over the country, to secure the passage of laws in the good name of tolerance and fraternity to prevent defamation of people as groups or classes. Results were obtained in the securing of city ordinances and State laws like that in Illinois. Efforts to obtain a national law failed of success, often only narrowly.

The Supreme Court of the United States has now ruled in the matter of "group libel" in an Illinois case. One Joseph Beauharnais, styled president of the White Circle League of America, Inc., had printed and arranged for the distribution of, and did distribute, according to evidence accepted in court, broadsides calling on the mayor and the city council of Chicago "to halt the further encroachment, harassment and invasion of white people, their property, neighborhoods and persons, by the Negro. . . . If persuasion and the need to prevent the white race from becoming mongrelized by the negro will not unite us, then the aggressions . . . rapes, robberies, knives, guns and marijuana of the negro, surely will."

Beauharnais was arrested and convicted under the law. He lost his appeal at each level of hearing and heard his conviction sustained, and the law which supported it declared constitutional, by the Supreme Court of the United States on April 28, 1952.

Justices Black, Reed, Douglas, and Jackson each wrote a dissenting opinion.

Justice Frankfurter wrote the affirming opinion. He recognized that the Illinois courts in deciding successively against Beauharnais had held to the requirement of Illinois law that for a defense against a charge of libel "to prevail, the truth of all facts in the utterance must be shown together with good motive for publication." He held that "the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words" "are no essential part of any exposition of ideas." Therefore Beauharnais, in using the terms he did in describing the conduct of Negroes as a class, was not rightfully exercising free speech.

Justice Black contended in his dissent that the First Amendment protecting freedom of speech through the Fourteenth Amendment was in this case of greater weight than the Illinois law seeking to protect a group from mass libel. We wish to select for quotation in this discussion one statement from Justice Black's opinion:

"Freedom of petition, assembly, speech and press could be greatly abridged by a practice of meticulously scrutinizing every editorial, speech, sermon or other printed matter to extract two or three naughty words on which to hang charges of 'group libel.' "

Justice Reed, with Justice Douglas joining him, held that the terms of the Illinois law call for further definition, which should precede judgment in a case arising from it.

Justice Douglas further argued in a dissenting statement of his own that not libel against a group, but a threat to public interest, should rather have been shown in challenging Beauharnais' exercise of the right of free speech.

Justice Jackson contended in his dissent that the Illinois statute did not itself adequately protect freedom of speech in the presence of an accusation of "group libel."

It was emphasized in the dissent that the records of the proceedings in the court of first instance did not show that Beauharnais' utterances had been declared libelous by the jury. The jury had declared him guilty of distributing material which the judge declared was libelous.

While every protection must be given to the constitutional liberties of American citizens, and anything overt against their persons or their properties must be promptly dealt with legally, freedom of speech, and hence freedom of religion, is a basic freedom and must be protected at every and all costs. We call attention again to the statement from Justice Black's dissent just quoted. We see a danger that either irresponsible litigation will flood the courts or the extreme care taken in speech and writing to avoid suit at law will result in a curtailment of freedom of speech, voluntary on the surface, but compelled in fact.

Perhaps as in the case of the McCollum decision, further definition, and hence better protection of freedom of speech and of those whom utterances might injure, will be provided in future cases. If so, we trust that the opinions of the dissent may receive more effective study than they seem to have in the Beauharnais decision. Freedom of the press must be guarded.

Justice Black reminds us of the ancient proverb, "Another such victory and I am undone."

F. H. Y.

U.S. Vatican Envoy

A VATICAN ENVOY from the United States is nearer an actuality now in one respect. Congress has granted the funds for it. Just before adjournment this summer the State Department Appropriation bill was passed, and included in its provisions was a $70,000 allowance for diplomatic representation at Vatican City.

It was not passed without effort at amendment. Democratic Congressman Price H. Preston, of Georgia, proposed an amendment which provided that no funds should be expended from the $70,000 allowed, except for an appointee duly approved by the Senate of the United States. The bill passed the House of Representatives with the Preston amendment.

In the Senate the Committee on Appropriations assigned the bill for study to a subcommittee, of which Senator McCarran was chairman. This subcommittee recommended the bill with the Preston rider out. The Senate passed the bill that way. In conference, House conferees agreed to the omission of the Preston amendment.

This action opens the door, at least financially, for the outgoing President, Mr. Truman, to designate by recess appointment, if he should so desire, an American envoy to Vatican City. Besides, in the authorization of the means, it suggests a tacit Congressional approval of such an appointment.

This is unfortunate. It should have been lesson enough to all public officials to witness the weighty protest against an envoyship to the Vatican when President Truman appointed General Mark Clark to that place. The protest was well reasoned and vigorous, and was expressed by a huge block of the citizenry.

The specious defense of the envoyship at Vatican City is that the United States can through it gain information concerning international affairs that it could not readily gain elsewhere. We cannot give this claim sober acceptance. The United States has more than once supplied the Papacy with information con-

cerning Roman Catholics in trying situations abroad. If the Holy See were entirely fraternal in its feelings toward the United States, could it not impart valuable information through the ambassador of the United States accredited to Italy? To this the Italian Government certainly would not object, for are not the government of Italy and the Pope in harmony, under the very explicit terms of the Concordat of 1929, terms recognized in the new Italian Constitution?

The fact is, and it is on the surface of the matter, that an envoy to Vatican City, accredited by his government under no matter what terminology, would be received by the Pope as an envoy to the *Holy See,* a purely ecclesiastical designation which the Pope unhesitatingly and insistently used in receiving all envoys to his throne.

The Pope is the head of a church, and as such should receive no political embassies, particularly not from the United States, for the whole structure of government here is conditioned by the doctrine of the separation of church and state.

It is not separation of church and state to have a representative of civil government seated at the headquarters of a religious body. It is not refraining from aiding in the "establishment of religion" to honor a denomination, in this case the Roman Catholic, with ambassadorial representation.

It would be unconstitutional for the United States to have a representative at the headquarters of *each* of the churches of the country. It is no more constitutional to have a representative at the headquarters of *one* of these. F. H. Y.

Willing Money for Masses

ONE OF THE PROVISIONS of the will of a woman who died in Ohio in 1949 led to litigation that aroused keen interest in church quarters. It raises the question of taxing money left for the saying of masses. The case was first tried in the Probate Court at Sandusky, Ohio. An appeal was taken to the sixth district court of appeals in Toledo. This court affirmed the rulings of the lower court, basing its decision on the written opinion of that court.

We are sure that all our readers will be interested in the reasoning of these courts, though there will no doubt be a wide difference of opinion concerning the conclusion reached.

The *Christian Century* (May 7, 1952) commenting on this case said:

"It looks . . . as though Commissioner Glander [of Ohio] has started a suit which could gladden the hearts of the legal profession for years. We don't know how far the state of Ohio is prepared to fight this contest. But the principle of taxation advanced by its tax commissioner has implications for church teaching—to say nothing about church finance—of such a nature that the church's authorities can be counted on to keep it in the courts until, to use that good old phrase, the last remedy is exhausted."

The opinion is reproduced herewith:

No. 21417-A
IN THE PROBATE COURT, SANDUSKY COUNTY, OHIO
IN THE MATTER OF
THE ESTATE OF
MARGARET A. SHANAHAN,
DECEASED.

OPINION OF THE COURT.
August 16, 1951

Margaret A. Shanahan died June 10, 1949, resident of Sandusky County, Ohio, leaving a last will and testament under the terms of which she provided for the payment of certain legacies and, in the residuary clause which is the part of the will pertinent to the issue in this matter, she directed as follows:

"I direct that all the rest, residue and remainder of my estate, real and personal, of every kind and description wheresoever situate, which I may own or have the right to dispose of at the time of my decease be sold, and of the total of the proceeds of such sale plus all other sums owned by or owing to me, after the payment of all my just debts, funeral expenses, expenses of administration, and any legacy or bequest hereinbefore made, I direct my executrix to expend one-sixth for masses, according to the ritual of the Roman Catholic Church, for the repose of my soul. I further direct my executrix to expend two-thirds of such total for such Masses for the repose of my Soul, the Souls of my parents, Bartholomew and Margaret Shanahan, and the souls of my Brothers, John, Maurice, Bartholomew and Frank Shanahan."

On June 22, 1950, the executrix filed an application and an itemized statement of assets and liabilities for determination of inheritance tax. The Court determined the tax finding the amount the executrix was directed to expend for Masses was not a taxable succession and no tax was assessed. Thereafter, the State Department of Taxation filed exceptions to this determination. In the original exceptions, Department also excepted to the exemption of a bequest to St. Vincent DePaul Society and The Toledo Catholic Charities. Later, the exceptions to the exemption of these bequests were withdrawn.

Margaret A. Shanahan, at the time of her death, was a woman in her middle 70's. During her lifetime, as a Catholic, she undoubtedly attended several hundred Masses. Assuming that she understood her

faith, she believed that the Mass was the central act of worship of her religion. She believed that the Mass was the unbloody sacrifice of the cross and she believed that it was offered, in the first place, to honor and glorify God; second, to thank Him for his favors; third, to ask His Blessings; and, fourth, to propitiate Him for the sins of all mankind. She believed that the fruits of the Mass are received by the person or persons for Whom the Mass is offered, all of those who assist at the Mass, the celebrant himself, and all mankind within or without the fold of the Church. She understood that the saying of a Mass for the repose of her Soul and for the Souls of her relatives would not be limited in its benefits to herself alone. She believed that it was an act of public worship and that, like the redemption on the cross, the repetition of the sacrifice on the altar was for the benefit and salvation of all mankind. She knew that the Mass was read daily in all parts of the world—from the deepest recesses of the African jungle to the highest reaches of the Asian Plateau, from the frozen wastes of the Arctic circle to the tropical climes of South America. She believed that the saying of the Mass from the rising of the sun to the setting thereof was the fulfilment of the prophecy of Malachias, Chapter 1, Verse 11: "From the rising of the sun, to the going down thereof, my name is great among the Gentiles and in every place there is sacrifice, and there is offered to my name a clean oblation." She had no near relatives whom she could consider the natural objects of her bounty. Believing all these things, could she not then have had in mind that she was doing a public charity by providing for a great number of Masses, probably to be said in all parts of the world, knowing full well the troubled state of the world. There are decisions that hold that the Mass is a public charity. (In re Cavanaugh's estate 126 N. W. Rep., P. 672.) If the testimony had been more fully directed toward this phase of the Mass, the Court would then be warranted in giving more consideration to the question as to whether or not the Mass came within the definition of a public charity as intended by the exemption statute of the Ohio inheritance tax law.

In determining the taxability of a succession under the Ohio inheritance tax law, it would be the Court's first duty to determine the nature and character of the tax. The opening paragraph of G. C. Section 5332 provides as follows:

"THE TAX IS HEREBY LEVIED UPON THE SUCCESSION TO ANY PROPERTY PASSING IN TRUST OR OTHERWISE TO OR FOR THE USE OF A PERSON, INSTITUTION OR CORPORATION."

You will note from the above language that it is a tax upon a *succession passing to a person, an institution or a corporation.* Consequently, there must be a passing over of something of value from the estate to an individual, institution or corporation. The tax is assessed against the person entitled to the thing of value passing over. In the case of Tax Commission Vs. Lamprecht reported in 107 Oh. St., P. 536, we find the following language:

"The most cursory examination of the Ohio inheritance tax law discloses that it is full of deficiencies, ambiguities, and uncertainties and its imperfections are so glaring, and the difficulties encountered in giving it a special administration are so great, that the Courts and the Tax Commission have been presented with problems of the utmost difficulty; and the decisions heretofore reached by the Courts have not been uniform among the lower Courts nor unanimous in this Court."

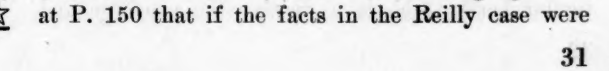
Quoting further from the same case at P. 538, we find the following language:

"Throughout all the authorities upon this subject, there is found a discussion of the fact that the federal tax is levied against the estate and the right of a decedent to transfer property, the state tax is levied against the *succession* or the *right of a person* to *receive* property from the estate of a decedent."

In the case of Wonderly Vs. Tax Commission, reported in 112 Oh. St., P. 233, the Court states that an inheritance tax is not a tax on property: it is a tax on its succession to others—on the privilege to receive it upon the owner's death, by way of devise, legacy, descent or distribution. Therefore, we conclude that the state inheritance tax is a tax in personam, not in rem, in other words, there must be a person identifiable against whom the tax can be assessed. Undoubtedly, the Court of Appeals, in the unreported decision in the estate of Gerdeman, was influenced by the reasoning set out above. In the estate of Gerdeman, the decedent died testate and his will provided as follows:

"I direct and demand that $10,000 be expended for Masses to be read according to the ritual of the holy Catholic Church for the repose of my soul and that of my Wife, Mary Gerdeman, the same to be read as soon as it can be done after my demise and the same to be paid out of my personal estate."

The Court held that the amount directed to be expended for Masses did not constitute a taxable succession under Sections 5331 and 5332 G. C., and that said amount was a proper deduction in determining the value of the decedent's net estate. The Supreme Court of Ohio, in the case of In re Estate of Reilly, reported in 138 Oh. St., P. 145, refers to the Gerdeman case and indicates in the language used at P. 150 that if the facts in the Reilly case were



similar to those in the Gerdeman case the holding of the Court would have been that no tax could be assessed. It will be noted that in the Gerdeman case there is a direction to the executor to expend. It will be noted that in the Shanahan case, that is, this case now under consideration by this Court, there is a direction to the executor to expend without specifying any particular Priest or any particular Parish Church. In the Reilly case, the question revolved around a situation where a testator left a specified sum to a trustee with direction to the trustee to pay a fixed amount to the Pastor of a specified Church. In such a case, you have an identifiable person who will receive the fund. In the Shanahan case, there is no identifiable person who will receive the fund. Commenting upon the direction to expend, the Court in the Reilly case distinguishes between a direction to expend and a direction to pay to a specified Priest or Parish. At P. 149, we find the following language:

"It is further argued that if a testator directs his executor to expend money to erect a monument or to have Masses said, no tax will be due. (Tax Commission Vs. Gerdeman.) And it is asked whether the Trusts here created are not in essence the same as a direction to an executor and, if so, why are they taxable? The answer is twofold. First, there is a very real and practical difference between the long term trusts here set up and a direction to an executor. An executorship is terminated in a relatively short time but the trusts here created by the testatrix may continue indefinitely—as long as the payments made by the trustee do not exceed the income from or exhaust the principal of the trust res. The testatrix obviously desired the disbursement of her funds in small amounts over a long period of time.—This continuing and positive accomplishment could not be achieved by the testatrix through the medium of a mere direction to her executor. Second, although a bequest to a trustee and a direction to an executor may have points of similarity, they nevertheless differ in the crucial elements which determine taxability.

"This Court has repeatedly held that the incidence of the Ohio inheritance tax is upon the succession, that is, upon the right to receive property from the estate of a decedent. Considering a mere direction to an executor, where does one find any *succession—any passing of property by will*—or any *right in* any *particular person* to *receive property* from the decedent's estate? There is merely the authorization to an executor to make an expenditure from the assets in his hands before the division and passing of the property of the estate. There is, thus, *no succession to any property upon which the tax may fall."*

It will be noted that the language of the Court in the above quotation stresses the fact that in a will in which there is a mere direction to the executor to expend that there is no succession to any identifiable or particular person who is to receive the property and against whom the tax can be assessed. During the taking of the testimony in this case, the State Department of Taxation attempted to show that even though there was no identifiable person who was to receive the money for the saying of Masses, that in all probability the fund would be completely distributed to the Pastor of St. Ann's Church, Fremont, Ohio. St. Ann's was the Parish Church of the decedent. In rebuttal, the Attorneys for the estate and Mr. Gallagher, as Amicus Curiae, offered testimony to show that a Pastor is limited with reference to Mass matters in the following respects: First, he may say but one Mass per day for a stipend. Second, if he is a Pastor, there are about one hundred days in each year on which he may receive no stipend. Third, he may receive only the sum of one dollar for a Low Mass or the sum of two dollars for a Low Mass set for a particular date, or the sum of five dollars for a High Mass. Fourth, he may not personally accept stipends which would obligate him to say Masses which could not be said in toto within one year. It is therefore apparent that from the above undisputed testimony there could not be any payment of these Masses to the Pastor of St. Ann's Church, who would therefor be the successor and against whom, consequently, the tax could be assessed. Testimony further conclusively shows that if the executrix should choose the Pastor of St. Ann's as her agent for the distribution of the money for Masses the Pastor would have no personal or financial interest in the fund whatever. It is further noted from the testimony that a stipend is a personal offering made to a priest. The Parish Church or the Church as an institution has no interest whatever in such an offering. It is solely and exclusively the property of the one to whom the offering is made. All of the authorities cited by the Department of Taxation in support of their contention of taxability in this case are citations where the money was left to a particular Priest or to the Pastor of a Particular Church. This is true in every citation set out in their brief, except the case of Lonza Vs. DiFronzo, 56 Ohio Law Abstract, P. 310, in which the question of taxability was not in issue.

In conclusion, therefore, the Court finds that under the language of the Shanahan will, wherein the executrix is directed to expend money for Masses without any limitation upon the right of expenditure, there is no taxable succession for the reason that there is no identifiable person against whom the tax may be assessed. It is the opinion of this Court that this has been the Law of Ohio since the decision in the Gerdeman case decided sometime in the early 1920's by the Court of Appeals of Putnam County and distinguished and approved by the Supreme Court of Ohio, In re Estate of Reilly, 138, Oh. St., P. 145.

The exceptions herein are overruled.

ROBERT GABEL.
Probate Judge.

NEWS and COMMENT

THE CATHOLIC EDUCATION PRESS, publicity agent for the Catholic University of America, Washington, D.C., was recognized at an appealed hearing last summer as a nonprofit organization entitled to exemption from personal property taxes. The amount of taxes involved is reputed to be $1,524 for the fiscal years of 1949 and 1950.

IT IS reported that Finnish elementary schools are to continue giving religious instruction, but the number of hours per week has been reduced from four to two. School authorities may assign more hours than these. Pupils who do not belong to any church receive instruction in the history of religion and in ethics. More than 90 per cent of the Finnish people are Lutherans.

THE CATHOLIC DAUGHTERS OF AMERICA at their recent biennial convention adopted a resolution branding as "unjustly discriminatory" any plan for Federal aid to education that would exclude a system of schools not supported by public taxes.

Because, the resolution continued, Catholic parochial schools are rendering to the nation an invaluable service in training children for good citizenship, "the right of federal aid must be all-inclusive to be just."

THE VATICAN will receive no envoy from the United States if the wishes of the Churchmen's Brotherhood of the Evangelical and Reformed Church are met. The resolution opposing the sending of a Vatican envoy was voted by the Brotherhood at a four-day session at Frederick, Maryland.

THE ISSUE OF TAXATION of parochial schools continues to be a live one in California. In midsummer the Roman Catholic archdiocese of Los Angeles was able to obtain a reduction in tax assessment upon its school properties. This was in sequence to a reduction from $5,000,000 to $2,000,000 assessment for its 158 school properties in Los Angeles County in 1951.

The petition for relief was based on the fact that the school buildings would be virtually of no value in the real estate market. Relief was granted on the declared basis that the maintenance of the parochial schools by the Roman Catholic Church effected "a tremendous saving to the county."

REGULAR BAPTISTS now have a test case in Quebec Province in Canada. A student pastor in the town of Val d'Or preached on the street and was promptly arrested and jailed as having broken the town's traffic ordinances. When released he went back to his street preaching, and was again arrested. The police chief had counseled the pastor to address his gathering in the baseball grounds, the municipal playground, or a vacant lot, but the preacher preferred the street. The Montreal office of the church announces there will be no more street preaching for the present.

SEVENTH-DAY ADVENTISTS conducted at Grand Ledge, Michigan, August 6-20, a training camp for men who have no conscientious scruples against serving the armed forces as medical corpsmen but who do have conscientious scruples against the bearing of arms. Nearly 300 young men took the training this summer, augmenting the 3,000 who in the past year have completed a similar course of training in Adventist secondary schools and colleges.

CHARLES P. TAFT, brother of Senator Taft, former president of the National Council of Churches, and presently candidate for the governorship in his native State of Ohio, addressing the National Education Association's ninetieth annual session this summer at Detroit, committed himself strongly in favor of noncontroversial courses of religion in public schools, stressing the love of God and man, and advocating the maintenance and extension of released-time programs of religious instruction.

THE MISSOURI SYNOD of the Lutheran Church, the California-Nevada district, has declared itself at its annual convention in favor of the California law exempting parochial and private schools from public taxation. The law went into effect on September 22.

FREE BUS RIDES are frowned upon in Iowa. In Salix a local school board banned the free transportation of parochial school children in public school busses to participate in free Red Cross swimming lessons in Sioux City.

FIFTY-SIX PER CENT of the parents of students in nine out of eleven of New York's vocational institutions have voted in favor of the providing of some kind and degree of required nonsectarian instruction in these schools. Forty-four per cent asked for courses in the history of religion, with stress on its place in modern society. Twenty-eight per cent wanted a short quarter hour daily period of nonsectarian instruction. Twenty-three per cent voted for a nonsectarian chapel service one hour a week.

THE STATE BOARD OF EDUCATION of Minnesota has denied to several public schools in that State

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the aid from State funds to which they are by law entitled.

Pierz and Buckman, predominantly Catholic communities, were taken off the State aid list because the classes these schools conducted in these "predominantly Catholic communities" were "indistinguishable" from parochial school classes. In Pierz the public school classes were conducted in rooms in a building owned by St. Joseph's church in the town, and "crucifixes and holy pictures were displayed" on the walls.

Another community, Bluffton, had for its teacher the housekeeper for the local Catholic priest. "For all practical purposes the entire Bluffton school is operated as a unit under the general control of the parish."

These schools will be restored to the State aid list as soon as the teaching of religion in the public school program and the displaying of religious pictures and emblems, shall have ceased as required by law.

NO PARTICULAR DENOMINATION was the target when the delegates of the Disciples of Christ for southern California, assembled at Long Beach, adopted a resolution opposing tax exemption for parochial schools. The emphasis upon objectivity included in the resolution doubtless was a consequence of the fight made by Catholics and other denominations supporting church-related schools in California to maintain on the statute books of California a recent law exempting secondary parochial schools from taxation. These schools had until the passage of this law been taxed.

THE MINISTRY OF CULTS in Greece refused to grant to the Free Evangelical Church of Greece a permit to hold religious services in Lamia.

Attacking this decision, the head of the Evangelical group held it a violation of the guarantees of liberty in religion written into the new Greek Constitution. The Ministry of Cults explains the refusal of the permit on the ground that the meetings might lead to proselyting, against which there are definite laws in Greece.

THE LORD'S DAY ALLIANCE of Pennsylvania claims to have brought the registration of the Protestant church vote in Pennsylvania to 75 or 80 per cent, comparing favorably with the national average of 62 per cent.

In anticipation of the autumn election, candidates for the Pennsylvania State Legislature are being asked to declare themselves on Sunday liquor sales, Sunday sports, Sunday operation of retail stores, and bingo and pari-mutuel betting at horse races.

EFFORTS ARE BEING MADE to have Buddhism declared the official religion on the island of Ceylon.

John Farrell From Library of Congress

Not only the National Congress but the State Legislatures are under the benevolent restraints of the revered Bill of Rights.

The Freedoms of the People Under a Great Constitution

ONE TEST OF GREATNESS is that it shall endure through the crises of time, and that these crises shall produce, not retrogression, but growth.

By this test the Constitution of the United States, the "greatest document ever struck off at a given time by the mind and purpose of man," must be declared great.

The Constitution met, first of all, the political needs of the moment of its birth. Soon after, ten amendments added to the document guaranteed that the *Government of the United States* would forever respect its citizens' individual rights.

Seventy-five years later, the Thirteenth, Fourteenth, and Fifteenth Amendments, added in the heat of legislative dispute at a time when almost half the sovereign States lay prostrate and almost silenced in bitter defeat, restrained all the *States* from violation of their citizens' rights.

Only thirty years ago the Supreme Court of the United States began to recognize that this second set of amendments put upon State governments not only the benevolent restraints of their own provisions but the tested restraints of the first ten amendments, the revered Bill of Rights.

It is of law, then, that the First Amendment restrains the States. It had always forbade the *Congress of the United States* to interfere with the exercise by the citizens of the freedom of religion, freedom of speech, and the freedom of the press. It is now understood that by means of the Fourteenth Amendment restraint is placed upon the *States* in the areas of these great freedoms. What was once forbidden only to the national Congress is now forbidden equally to State legislatures. Not only the Congress, but the States, are forbidden to pass a "law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

For a great Constitution, and the great liberties it guarantees and implements, the free citizenry of the United States is humbly but exultantly grateful.

F. H. Y.


BASIC TO
AMERICAN
FREEDOM
A WALL OF SEPARATION
Believing with you that religion is a matter which lies solely between man and his God: that he owes account to none other for his faith or his worship: that the legislative powers of government reach actions only, and not opinions.—I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof." thus building a wall of separation between church and state.
THOMAS JEFFERSON.
in a reply to the Danbury Baptist Association.
Ewing Galloway
Bryce Blue